

ORAL ARGUMENT NOT YET SCHEDULED

Case No. 14-1185

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Laura Sands,

Petitioner,

v.

National Labor Relations Board,

Respondent.

**On Petition for Review of a Decision
and Order of the National Labor Relations Board**

JOINT APPENDIX

February 11, 2015

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United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

November 10, 2014

Mark J. Langer, Esquire
Clerk, United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W., Room 5423
Washington, DC 20001-2866

Re: D.C. Cir. No. 14-1185--Laura Sands v.
NLRB
Board Case No. 25-CB-008896

Dear Mr. Langer:

I am enclosing a certified copy of the certified list in this case. I am serving a copy of the certified list of its contents on the counsel named below.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional Director, whose name and address also appear on the service list, with a copy of any correspondence the Court sends to counsel in this case. The Board attorneys

directly responsible for this case are Robert Englehart (202) 273-2978 and Douglas Callahan (202) 273-2988.

Very truly yours,

A handwritten signature in black ink that reads "Linda Dreeben" followed by a stylized monogram or set of initials.

Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1099 14th Street, N.W.
Washington, D.C. 20570
(202) 273-2960

Encls.

cc: Aaron B. Solem, Esq.
Glenn M. Taubman, Esq.

SERVICE LIST

Laura Sands v. NLRB
Board Case No. 25-CA-008896

Aaron B. Solem, Esquire
Glenn M. Taubman, Esquire
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Crawfordsville, IN 47933-1438

Petitioner

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jon@karmellawfirm.com

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International Union, AFL-CIO, CLC
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Respondent

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UFCW Local 700
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Respondent

Lawrence G. Plumb, International VP
United Food & Commercial Workers
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Erlanger, KY 41018-3509

Respondent

Rik Lineback
NLRB-Region 25
Minton-Capehart Federal Bldg.
575 N. Pennsylvania Street, Room 238
Indianapolis, IN 46204-1577

Regional Director

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

LAURA SANDS

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD

Respondent.

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No. 14-1185

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

Pursuant to authority delegated in Section 102.115 of the National Labor Relations Board's Rules and Regulations, 29 C.F.R. § 102.115, I certify that the list set forth in the attached Index, consisting of 1 volume, fully describes all documents, transcripts of testimony, exhibits, and other material constituting the record before the Board in United Food & Commercial Workers International Union, Local 700 (Kroger Limited Partnership) and Laura Sands, Case No. 25-CB-008896.



Gary Shinnars
Executive Secretary
National Labor Relations Board
1099 14th Street, NW
Washington, D.C. 20570
(202) 273-2960

November 10, 2014

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Union, Local 700 (Kroger Limited Partnership)
and Laura Sands

Board Case No: 25-CB-008896

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- 01.30.12 Charging Party's Motion to Disqualify Members Block, Griffin and Flynn from Ruling on this Case
- 09.17.14 Corrected Decision and Order

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

LAURA SANDS

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD

Respondent.

No. 14-1185

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Aaron B. Solem, Esquire
Glenn M. Taubman, Esquire
c/o National Right to Work Legal Defense
Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, VA 22160

/s Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1099 14th Street, N.W.
Washington, D.C. 20570

Dated at Washington, D.C.
this 10th day of November 2014

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TERM: NOVEMBER 2, 2003 THRU MAY 24, 2008

JA-11

J:\Cathie\HR\CONTRACTS\Local 700 Indy Clerks update 05.05.04

JOINT EXHIBIT 1

PREAMBLE

This Agreement is mutually entered into on November 2, 2003, by and between Kroger Limited Partnership, I, Indianapolis, Indiana, or its successors, hereinafter referred to as the Employer, and the United Food and Commercial Workers Local 700 chartered by the United Food and Commercial Workers International Union, AFL-CIO, hereinafter referred to as the Union.

ARTICLE 1. INTENT AND PURPOSE

The Employer and the Union each represent that the purpose and intent of this Agreement is to promote cooperation and harmony, to recognize mutual interests, to provide a channel through which information and problems may be transmitted from one to the other, to formulate rules to govern the relationship between the Union and the Employer, to promote efficiency and service and to set forth herein the basic agreements covering rates of pay, hours of work, and conditions of employment.

ARTICLE 2. UNION SECURITY

Section 2.1

Coverage: The Employer recognizes the Union as the sole collective bargaining agent with respect to working conditions, rates of pay, hours and other terms and conditions of employment for all grocery department employees in the Employer's retail stores as classified in Schedule "A" attached hereto and made a part of this Agreement located in the counties listed in Schedule "D" attached hereto and made a part of this Agreement.

Section 2.2

For the purpose of this Agreement, grocery department employees shall be all employees of the Employer not specifically exempted herein who are engaged in the handling or selling of items classified as groceries. Exempted are Store Managers, Co-Managers, employees whose work is exclusively and wholly performed within the Meat Department, guards, and professional and supervisory employees as defined in the Labor Management Relations Act of 1947 as amended.

Section 2.3

Union Shop: It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the execution date of this Agreement shall remain members in good standing and those who are not members on the execution date of this Agreement shall, on the thirty-first (31st) day following the execution date of this Agreement, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its execution date shall, on the thirty-first

(31st) day following the beginning of such employment, become and remain members in good standing in the Union. The Employer may secure new employees from any source whatsoever. During the first thirty (30) days of employment, a new employee shall be on a trial basis and may be discharged at the discretion of the Employer. By mutual agreement between the Employer and the Union, such trial period may be extended for an additional thirty (30)-day probationary period. For the purpose of this paragraph, the execution date of this Agreement shall be considered its effective date.

- Section 2.4** **Check-Off:** The Employer agrees to deduct initiation fees, dues and uniform general assessments from the wages of employees in the bargaining unit who are members of the Union and who provide the Employer with a voluntary written authorization which shall be irrevocable for a period of more than one (1) year or beyond the termination date of this Agreement, whichever occurs sooner. Deductions will be made by the Employer from wages of employees on a weekly basis (weekly deductions will commence within ninety (90) days of ratification) or the first pay period of each calendar month (as determined by the Local Union) and will be transmitted weekly to Local 700.
- Section 2.5** **Credit Union:** Credit Union deductions will be made by the Employer. Before any money is deducted, the Union must provide the Company with a signed authorization form from the employee stating the amount to be deducted weekly. The Company will transmit this money monthly to the designated U.F.C.W. Credit Union which will be located within the state of Indiana.
- Section 2.6** **A.B.C. Deduction:** The Employer agrees to honor and to transmit to the Union contribution deductions to the U.F.C.W. Active Ballot Club from employees who are Union members and who sign deduction authorization cards. The deductions shall be in the amounts and with the frequency (weekly or monthly in accordance with Section 2.4 above) specified on the Political Contribution Deduction Authorization Cards.
- Section 2.7** **Union Visitation:** The Manager of a store shall grant to any accredited official of the Union access to the store for the purpose of satisfying himself that the terms of this Agreement are being complied with.
- Section 2.8** **Union Store Card and Buttons:** The Employer agrees to display a Union Store Card and/or decal in a prominent place in its stores. The Union Store Card and/or decal is and shall remain the property of the Union.
- Section 2.9** Members of the Union may wear their Union buttons when on duty.
- Section 2.10** **New and Terminated Employees:** The Employer agrees to give the Union a list of new employees weekly showing employee's name, residence address,

Section 24.5 An employee who ceases to be eligible for full-time benefits in accordance with 24.1 above due to an involuntary reduction in hours shall be covered without a waiting period by the part-time benefits, if the eligibility requirements for such benefits are met.

ARTICLE 25. EXPIRATION

This Agreement shall continue in effect from November 2, 2003, through May 24, 2008, and shall automatically be renewed from year-to-year thereafter unless either party serves notice in writing to the other party sixty (60) days prior to the expiration date or anniversary date thereafter of a desire for termination of or changes in this Agreement.

IN WITNESS WHEREOF, the said parties have caused duplicate copies to be executed by their duly authorized officers this _____ day of _____, 2004.


FOR THE UNION:

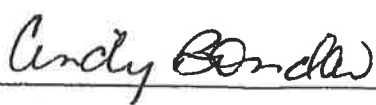




5-16-05
Date

FOR THE COMPANY:





5-16-05
Date

**UFCW
Local 700**

United Food & Commercial
Workers Union Local 700
AFL-CIO & CLC

5638 Professional Circle
Indianapolis, Indiana 46241-5092
(317) 248-0391 • (800) 334-3619
FAX (317) 248-7712
E-Mail ufcw700@ufcw700.org

1/11/05

Welcome to UFCW Local 700.

As a new employee, you are represented by United Food and Commercial Workers Union Local 700. If you are like many, this may be the first time you have been represented by a Union and you may have some questions as to what this means to you.

UFCW Local 700 is a family of considerable diversity that represents retail food employees, packinghouse workers, manufacturing workers, health care workers and barbers just to name a few in Indiana, Illinois, Michigan, Ohio and Kentucky. The Local Union staff is dedicated to making your Union the most effective we can be in representing your interests.

Enclosed you will find a Membership Application. Please take this opportunity to complete the application and return in the enclosed envelope.

If you have questions, problems or concerns, feel free to call the Local Union office at 317-248-0391 in Indianapolis or 1-800-334-3619.

We are privileged to represent you and your fellow workers.

Fraternally,

C. Lewis Piercey

C. Lewis Piercey
President

sap
Enclosure

Area Office:

2218 Mishawaka Ave.
South Bend, IN 46815
(574) 233-3311
(800) 237-8328

G. Lewis Piercey
President

Rick Fitzgerald
Secretary-Treasurer

Rlen Weithon
Director of
Collective Bargaining

Peggy Collins
Director of
Packing, Processing,
and Manufacturing

Herman Jackson
Organizing Director

JA-15

JOINT EXHIBIT 2

Contract 631

Union Shop: It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the union in good standing on the execution date of this Agreement shall remain members in good standing and those who are not members on the execution date of this Agreement shall, on the thirty-first (31st) day following the execution date of this Agreement, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its execution date shall, on the thirty-first (31st) day following the beginning of such employment, become and remain members in good standing in the Union. The Employer may secure new employees from any source whatsoever. During the first thirty (30) days of employment, a new employee shall be on a trial basis and may be discharged at the discretion of the Employer. By mutual agreement between the Employer and the Union, such trial period may be extended for an additional thirty (30) day probationary period. For the purpose of this paragraph, the execution date of the Agreement shall be considered its effective date.

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION

LOCAL 700 UFCW MEMBERSHIP APPLICATION

☐ NEW MEMBER ☐ RE-HIRE ☐ ADDRESS CHANGE ☐ REPLACE UNION CARD ☐ POLITICAL CHECKOFF ☐ OTHER

FIRST NAME		M.I.	LAST NAME		SEX	DATE OF BIRTH (MO/DAY/YR)		SOCIAL SECURITY NUMBER			
ADDRESS					CITY		STATE		ZIP		
PHONE ()		<input type="checkbox"/> MARRIED <input type="checkbox"/> SINGLE	REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE?		<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> FULL-TIME <input type="checkbox"/> PART-TIME		HOURLY WAGE		FOR LOCAL UNION USE ONLY BASIS FOR MEMBERSHIP: CHECK ONE	
EMPLOYER NAME AND LOCATION NO.			EMPLOYER ADDRESS			START DATE (MO/DAY/YR)		<input type="checkbox"/> Newly Initiated <input type="checkbox"/> Reinstatement from suspension <input type="checkbox"/> Admit (transfer within 30 days) <input type="checkbox"/> Cancel Withdrawal <input type="checkbox"/> Cancel Suspension <input type="checkbox"/> Reinstatement from Withdrawal <input type="checkbox"/> Reinstatement from Military Withdrawal INDUSTRY TYPE: CHECK ONE <input type="checkbox"/> Food <input type="checkbox"/> Food Processing <input type="checkbox"/> Non-Food <input type="checkbox"/> Barber & Cosmet <input type="checkbox"/> Professional <input type="checkbox"/> Manufacturing <input type="checkbox"/> Packinghouse <input type="checkbox"/> Other			
I hereby make application for membership in the UFCW Local Union and affirm that the above statements are true, and I agree that all monies paid by me shall be forfeited and my membership declared void if they are not true. I am also aware that I may legally refrain from being a member of the UFCW Local Union and forego all rights and benefits of membership as reflected on the reverse side. At this time I wish to become a member with full membership rights and obligations. I acknowledge that I have been informed of my membership rights, as well as my right to be a non-member and/or objector as reflected on the reverse side. I authorize the UFCW Local Union to represent me for the purposes of collective bargaining and handling of grievances, either directly or through such Local Union as it may duly designate.					TYPE OF WORK PERFORMED		PREV. AFFIL. LOCAL NO.		YEAR OF AFFILIATION		
					APPLICANT'S SIGNATURE				DATE		
					CONTRACT NUMBER		LOCAL 700 UFCW PRES. <i>C. Lewis Piercey</i>		AFFILIATION DATE (MO/YR)		

• Do not detach any part of this form

• Complete the first and second part

• Third part is optional

Check-Off Authorization and Assignment Local 700 UFCW

NAME		SOCIAL SECURITY NUMBER			
EMPLOYER		APPLICANT'S SIGNATURE		DATE	
<p>I hereby authorize my Employer to deduct from my wages and pay to the above Local Union and/or its authorized representative the equivalent of Initiation fee and regular monthly dues or fees in lieu thereof and any assessments which may be owing to such Local Union, as a result of my representation by the Local and my Employer or the Local are further authorized to transfer this authorization to any other Employer under Contract with the Local in the event I should change the employment.</p> <p>This authorization and assignment is made voluntarily and shall be irrevocable for the term of this Contract between the Employer and the Union, or one year from execution of this checkoff, whichever occurs sooner, and is not conditioned upon any present or future membership in the Union or absence of membership in the Union, and shall automatically continue from year to year unless revoked in writing by the undersigned to the Employer and the Union not more than fifteen (15) days nor less than ten (10) days prior to the expiration date of the contract or the anniversary date of this checkoff authorization.</p> <p>It is understood that the Employer's responsibility for the performance of this service is strictly limited to the delivery of such dues and initiation fees or fees in lieu thereof to the United Food and Commercial Workers Union Local.</p>					

DUES AUTHORIZATION CARD • LOCAL 700 UFCW

Political Check-Off Authorization Local 700 UFCW

NAME		SOCIAL SECURITY NUMBER			
EMPLOYER		APPLICANT'S SIGNATURE		DATE	
<p>ATTENTION PAYROLL:</p> <p>AUTHORIZATION FORM FOR PAYROLL DEDUCTION — I hereby authorize my employer to deduct the amount of twenty-five cents (25¢) per week from my paycheck. Such amount is to be transmitted to the UFCW International Active Ballot Club by Local UFCW.</p> <p>VOLUNTARY AUTHORIZATION — I understand that this authorization is voluntarily made and that I may contribute more or less than this amount by any lawful means, other than this checkoff.</p> <p>NOT A CONDITION OF MEMBERSHIP — I may refuse to contribute to the UFCW Active Ballot Club and understand that the making of payments is not a condition of membership in the Union or of employment with the Employer and that I have a right to refuse to sign this authorization and not to contribute to the UFCW ABC Club without reprisal.</p> <p>CONTRIBUTION FOR POLITICAL PURPOSES — I understand that my contribution will be used for political purposes, including the support of candidates for federal, state, and local office.</p> <p>AUTHORIZATION MAY BE REVOKED — I expressly reserve the right to revoke this authorization at any time in writing.</p>					

POLITICAL CHECKOFF AUTHORIZATION CARD — LOCAL 700 UFCW

JA-17

**Important Information Concerning Your Opportunity to Become an Active Member
of the United Food and Commercial Workers International Union, AFL-CIO, CLC,
Local 700 and Your Rights Under the Law.**

The right, by law, to belong to the Union and to participate in its affairs is a very important right. Currently, you also have the right to refrain from becoming a member of the Union. If you choose this option, you may elect to satisfy requirements of a contractual union security provision by paying the equivalent of an initiation fee and monthly dues to the Union. In addition, non-members who object to payment in full of the equivalent of dues and fees may file written objections to funding expenditures that are not germane to the Union's duties as your agent for collective bargaining. If you choose to be an objector, your financial obligation will be reduced very slightly. Individuals who choose to file such objections should advise the Union in writing at its business address of this choice. The Union will then advise you of the amounts which you must pay and how these amounts are calculated, as well as any procedures we have for challenging our computations.

Please be advised that non-member status constitutes a full waiver of the rights and benefits of UFCW membership. More specifically, this means that you would not be allowed to vote on contract modifications or new contracts; would be ineligible to hold union office or participate in union elections and all other rights, privileges, and benefits established for and provided to active UFCW members by the UFCW International Constitution, Local 700 Bylaws, or established by the local Union.

We are confident that after considering your options, you will conclude that the right to participate in the decision making process of your Union is of vital importance to you, your family and your co-workers, and you will complete your application for membership in the United Food and Commercial Workers.

Your involvement in your union is vital to the protection of job security, wages, benefits, and working conditions.

08/19/2005 15:25

3126410781

KARMEL & GILDEN

PAGE 12/34

**UFCW
Local 700****United Food & Commercial
Workers Union Local 700
AFL-CIO & CLC**5838 Professional Circle
Indianapolis, Indiana 46241-5092
(317) 248-0391 • (800) 334-3819
FAX (317) 248-7712
E-Mail: ufcw700@ufcw700.org

January 25, 2005

Laura Sands
526 Valley Drive
Crawfordsville, IN 47933

Dear Laura,

Please find enclosed with this letter a membership application packet. This document sets forth highlights concerning your rights of membership in Local 700 as well as forms that will facilitate you in satisfying your financial obligation to the Union. Your financial obligation is a condition of employment and is explained on the enclosed documents. This requirement is pursuant to the Collective Bargaining Agreement between U.F.C.W. Local 700 and your employer and applicable law. Currently, full regular monthly dues and fees based on your hire date of December 10 2004 are set forth below.

<u>Dues for February 2005 at \$25.39 per month</u>	<u>\$25.39</u>
Initiation fees	<u>\$66.00</u>
Total	<u>\$91.39</u>

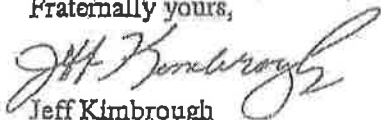
Area Office:

2218 Mishawaka Ave.
South Bend, IN 46615
(574) 293-3311
(800) 237-8820C. Lewis Piercey
PresidentRick Fitzgerald
Secretary-TreasurerRian Wathen
Director of
Collective BargainingPeggy Collins
Director of
Packing, Processing,
and ManufacturingNorman Jackson
Organizing Director

Please pay the amounts you owe by February 1, 2005 OR you may fill out, sign and return the enclosed application and dues deduction form with in seven (7) days of receipt of this letter. Filling out, signing and returning these forms will facilitate you in satisfying your financial obligations and thereby, avoid any current or future arrearage that may jeopardize your employment.

If your financial obligation is not met by the above stated date, we are required to ask your employer to terminate your employment. We certainly do not wish to take this action so please act immediately.

Fraternally yours,


Jeff Kimbrough
Business Representative

Enclosures

cc: Store Mgr. J-948

Certified # 7004 0750 0002 8240 8740

JA-19

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION

LOCAL 700 UFCW MEMBERSHIP APPLICATION

☐ NEW MEMBER ☐ RE-HIRE ☐ ADDRESS CHANGE ☐ REPLACE UNION CARD ☐ POLITICAL CHECKOFF ☐ OTHER

PART 1

FIRST NAME	MI.	LAST NAME	SEX	DATE OF BIRTH (MO/DAY/YR)	SOCIAL SECURITY NUMBER			
ADDRESS			CITY	STATE	ZIP			
PHONE ()	<input type="checkbox"/> MARRIED <input type="checkbox"/> SINGLE	REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE?	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> FULL-TIME <input type="checkbox"/> PART-TIME	HOURLY WAGE	FOR LOCAL UNION USE ONLY BASIS FOR MEMBERSHIP: CHECK ONE		
EMPLOYER NAME AND LOCATION NO.		EMPLOYER ADDRESS		START DATE (MO/DAY/YR)		<input type="checkbox"/> Newly Initiated <input type="checkbox"/> Reinstatement from suspension <input type="checkbox"/> Admit (transfer within 30 days) <input type="checkbox"/> Cancel Withdrawal <input type="checkbox"/> Cancel Suspension <input type="checkbox"/> Reinstatement from Withdrawal <input type="checkbox"/> Reinstatement from Military Withdrawal		
I hereby make application for membership in the UFCW Local Union and affirm that the above statements are true, and I agree that all money paid by me shall be forfeited and my membership declared void if they are not true. I am also aware that I may legally refrain from being a member of the UFCW Local Union and forego all rights and benefits of membership as reflected on the reverse side. At this time I wish to become a member with full membership rights and obligations. I acknowledge that I have been informed of my membership rights, as well as my right to be a non-member and/or objector as reflected on the reverse side. I authorize the UFCW Local Union to represent me for the purposes of collective bargaining and handling of grievances, either directly or through such Local Union as it may duly designate.			TYPE OF WORK PERFORMED		PREV. AFFIL. LOCAL NO.	YEAR OF AFFILIATION		
			APPLICANT'S SIGNATURE X		DATE		INDUSTRY TYPE: CHECK ONE	
			CONTRACT NUMBER	LOCAL 700 UFCW PRES. C. Lewis Piercey	AFFILIATION DATE (MO/YR)		<input type="checkbox"/> Food <input type="checkbox"/> Food Processing <input type="checkbox"/> Non-Food <input type="checkbox"/> Barber & Cosmet <input type="checkbox"/> Professional <input type="checkbox"/> Manufacturing <input type="checkbox"/> Packinghouse <input type="checkbox"/> Other	

• Do not detach any part of this form

• Complete the first and second part

• Third part is optional

Check-Off Authorization and Assignment Local 700 UFCW

PART 2

NAME	SOCIAL SECURITY NUMBER			
EMPLOYER	APPLICANT'S SIGNATURE		DATE	
I hereby authorize my Employer to deduct from my wages and pay to the above Local Union and/or its authorized representative the equivalent of initiation fee and regular monthly dues or fees in lieu thereof and any assessments which may be owing to such Local Union, as a result of my representation by the Local and my Employer or the Local are further authorized to transfer this authorization to any other Employer under Contract with the Local in the event I should change the employment.				
This authorization and assignment is made voluntarily and shall be irrevocable for the term of this Contract between the Employer and the Union, or one year from execution of this checkoff, whichever occurs sooner, and is not conditioned upon any present or future membership in the Union or absence of membership in the Union, and shall automatically continue from year to year unless revoked in writing by the undersigned to the Employer and the Union not more than fifteen (15) days nor less than ten (10) days prior to the expiration date of the contract or the anniversary date of this checkoff authorization.				
It is understood that the Employer's responsibility for the performance of this service is strictly limited to the delivery of such dues and initiation fees or fees in lieu thereof to the United Food and Commercial Workers Union Local.				
DUES AUTHORIZATION CARD • LOCAL 700 UFCW				

Political Check-Off Authorization Local 700 UFCW

NAME	SOCIAL SECURITY NUMBER			
EMPLOYER	APPLICANT'S SIGNATURE		DATE	
ATTENTION PAYROLL: AUTHORIZATION FORM FOR PAYROLL DEDUCTION — I hereby authorize my employer to deduct the amount of twenty-five cents (25¢) per week from my paycheck. Such amount is to be transmitted to the UFCW International Active Ballot Club by Local UFCW. VOLUNTARY AUTHORIZATION — I understand that this authorization is voluntarily made and that I may contribute more or less than this amount by any lawful means, other than this checkoff. NOT A CONDITION OF MEMBERSHIP — I may refuse to contribute to the UFCW Active Ballot Club and understand that the making of payments is not a condition of membership in the Union or of employment with the Employer and that I have a right to refuse to sign this authorization and not to contribute to the UFCW ABC Club without reprisal. CONTRIBUTION FOR POLITICAL PURPOSES — I understand that my contribution will be used for political purposes, including the support of candidates for federal, state, and local office. AUTHORIZATION MAY BE REVOKED — I expressly reserve the right to revoke this authorization at any time in writing.				
POLITICAL CHECKOFF AUTHORIZATION CARD — LOCAL 700 UFCW				

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**Important Information Concerning Your Opportunity to Become an Active Member
of the United Food and Commercial Workers International Union, AFL-CIO, CLC,
Local 700 and Your Rights Under the Law.**

The right, by law, to belong to the Union and to participate in its affairs is a very important right. Currently, you also have the right to refrain from becoming a member of the Union. If you choose this option, you may elect to satisfy requirements of a contractual union security provision by paying the equivalent of an initiation fee and monthly dues to the Union. In addition, non-members who object to payment in full of the equivalent of dues and fees may file written objections to funding expenditures that are not germane to the Union's duties as your agent for collective bargaining. If you choose to be an objector, your financial obligation will be reduced very slightly. Individuals who choose to file such objections should advise the Union in writing at its business address of this choice. The Union will then advise you of the amounts which you must pay and how these amounts are calculated, as well as any procedures we have for challenging our computations.

Please be advised that non-member status constitutes a full waiver of the rights and benefits of UFCW membership. More specifically, this means that you would not be allowed to vote on contract modifications or new contracts; would be ineligible to hold union office or participate in union elections and all other rights, privileges, and benefits established for and provided to active UFCW members by the UFCW International Constitution, Local 700 Bylaws, or established by the local Union.

We are confident that after considering your options, you will conclude that the right to participate in the decision making process of your Union is of vital importance to you, your family and your co-workers, and you will complete your application for membership in the United Food and Commercial Workers.

Your involvement in your union is vital to the protection of job security, wages, benefits, and working conditions.

FROM : LOCAL700

PHONE NO. : 13172487712

Jul. 01 2005 11:32AM P2

June 25, 2005
Laura Sands
526 Valley Drive
Crawfordsville, IN 47933



Secretary-Treasurer
UFCW Local 700
5638 Professional Circle
Indianapolis, IN 46241-5092

Dear Secretary-Treasurer,

Due to the fact that I never wanted to join in the first place, and as I only joined because I was led to believe that I had to as a condition of my employment, I hereby resign as a member of UFCW Local 700 and all of its affiliates. I was deliberately misled by union officials regarding my rights to remain a nonmember and to receive a reduction in any payment I would have to make pursuant to a "union security" clause. My resignation is effective immediately. I will continue to meet my lawful obligation of paying a representation fee to the union under its "union shop" or "agency shop" agreement with Kroger.

Furthermore, I object to the collection and expenditure by the union of a fee for any purpose other than my pro rata share of the union's costs of collective bargaining, contract administration, and grievance adjustment, as is my right under *Communications Workers v. Beck*, 487 U.S. 735 (1988). Pursuant to *Teachers Local 1 v. Hudson*, 475 U.S. 292 (1986), and *Abrams v. Communications Workers*, 59 F.3d 1373 (D.C. Cir. 1995), I request that you provide me with my procedural rights, including: reduction of my fees to an amount that includes only lawfully chargeable costs; notice of the calculation of that amount, verified by an independent certified public accountant; and notice of the procedure that you have adopted to hold my fees in an interest-bearing escrow account and give me an opportunity to challenge your calculation and have it reviewed by an impartial decisionmaker.

Accordingly, I also hereby notify you that I wish to authorize only the deduction of representation fees from my wages. If I am required to sign a new deduction authorization form to make that change, please provide me with the necessary form.

Please reply promptly to my request. Any further collection or expenditure of dues or fees from me made without the procedural safeguards required by law will violate my rights under the National Labor Relations Act and/or U.S. Constitution.

Sincerely,

Laura Sands

Laura Sands

CC: President, UFCW Local 700

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08/19/2005 15:25

3126410781

KARMEL & G. LN

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FROM : LOCAL 700

PHONE NO. : 13172487712

Jul. 01 2005 11:33AM P4

June 29, 2005

Laura Sands
526 Valley Drive
Crawfordsville, Indiana 47933

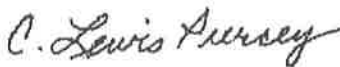
Dear Laura:

Independent auditors have reviewed the allocation of expenses between chargeable and non-chargeable expenses of U.F.C.W. Local 700 for December 31, 2004. A copy of portions of the auditors' report is enclosed for your review. The auditors have determined that the amount of expenses attributable to chargeable expenses is 86.07%. Accordingly, you will be charged the equivalent amount of regular monthly financial core fees, which is the sum of \$21.84. Since you have completed a check off authorization, the weekly dues deduction of \$5.04 will be deducted from your paycheck. You may also challenge the above calculation as set forth in the enclosed procedures.

Finally, I want to take this opportunity to remind you that in exchange for this reduced fee you have given up many rights, including the right to vote to accept or reject proposed collective bargaining agreements and the right to vote in an election of your union officers or to run for union office. In short, you have given up your right to have a voice in a democratic union, and instead, the decisions affecting your working conditions and benefits will be made by others without your participation or vote. However, the decision to give up these rights so cheaply is yours and yours alone.

If you choose to reconsider this decision and become a member of Local 700, please contact the undersigned or your union representative to let us know.

Very truly yours,



C. Lewis Piercey
President

CLP/sap
enclosures

cc: Jeff Kimbrough, Union Representative
files

CERTIFIED MAIL NO. 7002 3150 0004 3293 5569

UFCW
Local 700

United Food & Commercial
Workers Union Local 700
AFL-CIO & CLC

5638 Professional Circle
Indianapolis, Indiana 46241-5082
(317) 248-0391 • (800) 334-8618
FAX (317) 248-7712
E-Mail: ufcw700@ufcw700.org

Area Office:

3218 Michigan Ave.
Scum Bend, IN 48818
(574) 233-3517
(800) 227-8929

C. Lewis Piercey
President

Rick Fitzgerald
Secretary-Treasurer

Allen Watson
Director of
Collective Bargaining

Peggy Collins
Director of
Packing, Processing,
and Manufacturing

Helman Jackson
Organizing Director

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JOINT EXHIBIT 5

PAGE 1 OF 2

**UNITED FOOD AND COMMERCIAL WORKERS
UNION LOCAL NO. 700**

**SCHEDULE OF EXPENSES AND ALLOCATION OF EXPENSES
BETWEEN CHARGEABLE EXPENSES AND NON-CHARGEABLE EXPENSES
MODIFIED CASH BASIS**

YEAR ENDED DECEMBER 31, 2004

	<u>Total</u>	<u>Non- Chargeable</u>	<u>Chargeable</u>
Automobile expense	\$ 63,628	\$ -	\$ 63,628
Building expense	22,373	-	22,373
Depreciation			
Building and improvements	32,589	-	32,589
Furniture and equipment	18,645	-	18,645
Vehicles	88,233	-	88,233
Donations			
Charitable, civic and labor	25,489	25,489	-
Political	24,111	24,111	-
Dues and fees refunded	37,368	-	37,368
Equipment rental	10,925	-	10,925
Fringe benefit contributions			
Health	177,489	-	177,489
Pension	22,374	-	22,374
Other	2,285	-	2,285
Gift to retiring officer	26,014	26,014	-
Group life insurance premiums	12,319	-	12,319
Insurance expense	19,590	-	19,590
International Hardship Fund	25,000	-	25,000
Meeting, convention and conference	84,751	-	84,751
Miscellaneous	4,757	-	4,757
Negotiations	16,923	-	16,923
Office expense			
Supplies	37,907	-	37,907
Maintenance and repairs	11,872	-	11,872
Fees	3,656	-	3,656
Subscriptions	795	-	795
Organizing	38,259	-	38,259
Payroll taxes	118,443	-	118,443

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See Report of Independent Auditors.
See accompanying notes to schedule.

PAGE 2 OF 2

UNITED FOOD AND COMMERCIAL WORKERS
UNION LOCAL NO. 700

SCHEDULE OF EXPENSES AND ALLOCATION OF EXPENSES
BETWEEN CHARGEABLE EXPENSES AND NON-CHARGEABLE EXPENSES
MODIFIED CASH BASIS

YEAR ENDED DECEMBER 31, 2004

	<u>Total</u>	<u>Non- Chargeable</u>	<u>Chargeable</u>
Per capita taxes			
International	\$ 1,383,097	\$ 418,802	\$ 964,295
Other	41,695	41,695	-
Per diem allowances	9,037	-	9,037
Postage and shipping	36,412	2,424	33,988
Printing and publications	38,733	8,863	29,870
Professional fees			
Audit and accounting	36,994	-	36,994
Legal and arbitration	162,437	-	162,437
Public relations	8,067	8,067	-
Purchase of promotional items	29,709	29,709	-
Retiree health coverage	23,749	-	23,749
Salaries	1,464,624	-	1,464,624
Telephone expense	43,442	-	43,442
Total expenses	<u>4,203,791</u>	<u>585,174</u>	<u>3,618,617</u>

DEDUCTIONS

Reimbursements from UFCW

International Union

Delegate expense reimbursements (2,515)

\$ 4,201,276

\$ 585,174

(2,515)
\$ 3,616,102

FAIR SHARE PERCENTAGE

86.07%

See Report of Independent Auditors.
See accompanying notes to schedule.

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UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION

STATEMENT OF EXPENSES AND ALLOCATION OF
EXPENSES BETWEEN CHARGEABLE EXPENSES
AND NON-CHARGEABLE EXPENSES

AND
REPORT OF INDEPENDENT AUDITORS

YEAR ENDED DECEMBER 31, 2003

**UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION**

**STATEMENT OF EXPENSES AND ALLOCATION OF
EXPENSES BETWEEN CHARGEABLE EXPENSES
AND NON-CHARGEABLE EXPENSES**

AND

REPORT OF INDEPENDENT AUDITORS

YEAR ENDED DECEMBER 31, 2003

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Statement of Expenses and Allocation of Expenses Between Chargeable Expenses and Non-Chargeable Expenses	2
Notes to Statement	3



CALIBRE
CPA GROUP
P.C.

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A member of
K5 International



REPORT OF INDEPENDENT AUDITORS

To the Executive Committee of
United Food and Commercial Workers International Union

We have audited the accompanying statement of expenses and allocation of expenses between chargeable expenses and non-chargeable expenses of the United Food and Commercial Workers International Union for the year ended December 31, 2003. This statement is the responsibility of the International Union's management. Our responsibility is to express an opinion on the statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the statement of expenses and allocation of expenses between chargeable expenses and non-chargeable expenses is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statement. An audit also includes assessing the accounting principles used and significant estimates made by the International Union's management, as well as evaluating the overall presentation of the statement. We believe that our audit of the statement provides a reasonable basis for our opinion.

The total expenses presented in Column A of the statement are based on the expenses of the United Food and Commercial Workers International Union for the year ended December 31, 2003 as modified as discussed in Note 1. The allocations of expenses between chargeable (Column B) and non-chargeable (Column C) are based on the descriptions presented in Note 2 and the significant factors and assumptions described in Note 3. The accompanying statement was prepared for the purpose of determining the fair share cost of services rendered by the International Union for employees represented by, but not members of, the United Food and Commercial Workers International Union. The accompanying statement is not intended to be a complete presentation of the International Union's financial statements.

In our opinion, the statement of expenses referred to above presents fairly, in all material respects, the total expenses of the United Food and Commercial Workers International Union, as modified for the accounts discussed in Note 1, and the allocation of those expenses between chargeable expenses and non-chargeable expenses, for the year ended December 31, 2003 on the basis of the significant factors and assumptions described in the notes.

This report is intended solely for the information and use of the Executive Committee and management of the United Food and Commercial Workers and its agency fee objectors and is not intended to be and should not be used by anyone other than these specified parties.

Calibre CPA Group, P.C.

Washington, DC
January 23, 2004 except for the allocation
of expenditures described in Notes 2 and 3
as to which the date is December 15, 2004

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**UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION**

**STATEMENT OF EXPENSES AND ALLOCATION OF
EXPENSES BETWEEN CHARGEABLE EXPENSES
AND NON-CHARGEABLE EXPENSES**

YEAR ENDED DECEMBER 31, 2003

	Column A	Column B	Column C
	Total Expenses	Chargeable Expenses	Non-Chargeable Expenses
President's Office	\$ 19,671,792	\$ 19,364,009	\$ 307,783
Secretary-Treasurer's Office	7,930,297	7,926,857	3,440
Legal Department	8,155,011	7,802,643	352,368
Health Care, Insurance, Finance			
Professional Employees Division	2,183,446	2,183,446	-
Manufacturing, Processing, and Packinghouse	3,546,184	3,428,275	117,909
Organizing Department	8,520,886	8,520,886	-
Legislative and Political Affairs Department	3,284,704	-	3,284,704
Collective Bargaining Department	2,426,710	2,288,605	138,105
Negotiated Benefits Department	2,403,130	2,347,209	55,921
Strategic Programs	4,744,646	3,409,116	1,335,530
International and Foreign Affairs	1,880,035	-	1,880,035
Regional offices	72,536,122	63,409,109	9,127,013
Building expenses	1,479,111	1,321,281	157,830
Affiliation fees	10,464,923	-	10,464,923
Publications	3,551,438	2,893,471	657,967
Donations and contributions	1,511,347	-	1,511,347
Active Ballot Club	1,497,568	-	1,497,568
Outside legal counsel	2,252,466	2,156,457	96,009
Chartered bodies expense	84,075,005	79,448,827	4,626,178
Public relations	354,703	-	354,703
Convention	8,342,430	8,342,430	-
Scholarship expenses	9,099	-	9,099
Legal fee reimbursement	(562,500)	-	(562,500)
Total expenses	\$ 250,258,553	\$ 214,842,621	\$ 35,415,932
Percentage	100%	85.85%	14.15%

See accompanying notes to statement.

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**UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION**

**NOTES TO
STATEMENT OF EXPENSES AND ALLOCATION OF
EXPENSES BETWEEN CHARGEABLE EXPENSES
AND NON-CHARGEABLE EXPENSES**

YEAR ENDED DECEMBER 31, 2003

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Accounts Excluded from Statement - The expense of providing health and fidelity bonding insurance and supplies sold to local unions is recovered through reimbursement by locals and has been excluded from the statement. The building operating expenses associated with the building rental operations of the International Union have been excluded from the statement. In addition, legal fee reimbursements that pertain to expenses previously included in prior statements have been deducted from total expenses in this statement.

Method of Accounting - The statement has been prepared using the modified cash basis of accounting. Generally, expenses are recognized when paid rather than when the obligation is incurred but expenses include depreciation and amortization of property and equipment and amortization of deferred leasing commissions.

Depreciation - Property and equipment are carried at cost. Building and improvements and furniture and equipment are being depreciated using the straight-line method. Leasehold improvements are amortized over the economic life of the improvement or the life of the lease, whichever is shorter. Depreciation and amortization expenses were \$2,079,554 as reported in the audited financial statements of the International Union for the year ended December 31, 2003. The total expenses for this statement were reduced by allocated depreciation of leased floors which is offset by rental income.

Canadian Currency - Canadian dollars included in the statement are translated to U.S. dollar equivalents at the average exchange rates for the year.

Tax Status - The Internal Revenue Service has advised that the International Union qualifies under Section 501(c)(5) of the Internal Revenue Code and is, therefore, not subject to tax under present income tax laws.

Estimates - The preparation of this statement requires management to make estimates and assumptions that affect certain reported amounts and disclosure in the financial statements. Actual results could differ from those estimates.

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NOTE 2. DESCRIPTION OF THE BASES FOR CLASSIFYING CHARGEABLE EXPENSES AND NON-CHARGEABLE EXPENSES

Chargeable Expenses - Chargeable expenses are those expenses incurred by the International Union for representational activities. Representational activities are those duties that the International Union performs, and assists the affiliated local unions in their performance, as a representative of the employees in dealings with the employers, including collective bargaining, contract administration, grievance arbitration, certain organizing activities and other activities germane to the collective bargaining process.

Activities that are classified as chargeable include the following: preparation for and negotiation of collective bargaining agreements; contract administration including grievance activities; economic actions including strike related expenses such as strikes, picketing, boycotts and demonstrations to maintain a unified front in support of collective bargaining objectives; expenses of litigation incident to negotiating and administering contracts, settling grievances and disputes, arbitrations, jurisdictional disputes with other unions, and conducting other litigation before administrative agencies or courts concerning bargaining units or bargaining unit employees; membership services designed to strengthen the International Union as a cohesive and effective bargaining agent; union publications to the extent they report on the International Union's representational or administrative activities; membership education and training pertaining to grievance handling and arbitration; governance of the union, including conventions; Executive Board meetings and expenses; subsidies for local union operations; internal administration of the International Union including formulating policy, judicial administration, financial administration, and maintenance of membership status; and organizing expenses within a competitive market, including expenses for which the objective is to organize employees in geographical areas and/or industries with which employers of represented employees might compete, and for which an increased level of unionized employees may benefit the collective bargaining position and representation provided by the International Union to represented employees.

Non-Chargeable Expenses - Non-chargeable expenses are those expenses incurred by the International Union for the benefit and advancement of the members and their union which are not considered representational activities for non-members. Non-chargeable activities are those services that are ideological or political in nature, exclusively for the benefit of members, and those that are not considered germane to representing non-members in the collective bargaining process.

Activities that are classified as non-chargeable include the following: organizing expenses outside of competitive markets; legislative and government activities; litigation costs that are not germane to member representation; public relations and other efforts directed toward functional activities that are not considered germane to representing non-members in the collective bargaining process; political activity expenses which include support at the Federal, state or local level; and International Union publications to the extent they report on non-administrative or non-representational activities including related advertising. Other non-chargeable examples include: charitable contributions; per capita tax or fees paid to a labor organization, scholarship expenses, and the cost of benefits that are not available to non-members.

NOTE 3. SIGNIFICANT FACTORS AND ASSUMPTIONS USED IN THE ALLOCATION OF EXPENSES BETWEEN CHARGEABLE EXPENSES AND NON-CHARGEABLE EXPENSES

Department Allocation - The expenses of the International Union are generally classified within regional offices or headquarters departments. The salaries of each office or department in the International have been identified and employee benefits and payroll taxes have been allocated based on the office or department's percentage of total salaries. The activities of the regional office or the department have been determined to be chargeable, non-chargeable or mixed based on the descriptions in Note 2.

For the office or departments determined to be mixed, activity reports (time sheets) were completed by individuals within the office or department who were randomly selected. The activity reports which record the function and time spent on that function are the basis for the allocation between chargeable and non-chargeable expenses recorded within the office or department.

Headquarters Staff Expenses - Headquarters staff expenses were analyzed and allocated to the headquarters departments.

Field Staff Expenses - Field staff expenses were analyzed and allocated to the regional offices.

General and Administrative Expenses - A general and administrative pool was established for those expenses that are common to all departments at International headquarters. The general and administrative pool was allocated to each department and to the costs discussed below excluding convention, affiliation fees and outside legal services, based on each item's total costs.

Building Expenses - The useable square footage of the Suffridge Building has been determined by an architectural firm. The total expenses have been allocated to each of the eleven floors based on the percentage of useable square footage that floor represents. The \$1,833,417 in building expense of the six leased floors is offset by the rental income collected and, thus, has been excluded from the calculation of chargeable and non-chargeable expenses. The cost for each floor the International Union occupies has been allocated to the departments located on that floor by the percentage of square footage they occupy.

The International Union additionally occupies space in other buildings, the costs of which are similarly allocated.

Affiliation Fees - Affiliation fees paid to the AFL-CIO or other organizations are considered to be non-chargeable.

Publications - The expenses of the publications were allocated between chargeable and non-chargeable based on the content of the publications.

Donations and Contributions - Donations and contributions are considered to be non-chargeable.

Active Ballot Club - Active Ballot Club expenses are considered to be non-chargeable.

NOTE 3. SIGNIFICANT FACTORS AND ASSUMPTIONS USED IN THE ALLOCATION OF EXPENSES BETWEEN CHARGEABLE EXPENSES AND NON-CHARGEABLE EXPENSES (CONTINUED)

Legal Department and Outside Legal Counsel - All attorneys employed by the International Union's legal department allocated their time between chargeable and non-chargeable activities. In addition, all expenses incurred for the use of outside legal counsel were reviewed on a case by case basis to determine if they were chargeable or non-chargeable.

Chartered Bodies Expenses - The International Union supports the activities of its chartered bodies with financial assistance for a variety of activities including local union and council administration expenses, legal expenses, special projects, death benefits, strike benefits, insurance and certain organizing activities. To the extent that the financial assistance is explicitly provided for non-chargeable activities, that financial assistance has been included in the non-chargeable category. To the extent that the financial assistance is explicitly provided for chargeable activities, that financial assistance has been included in the chargeable category.

Public Relations - Public relations expenses are considered to be non-chargeable.

Convention - Expenses pertaining to the International Convention, which is held every five years, are considered to be chargeable.

Scholarship Expenses - Scholarship expenses are considered to be non-chargeable.

NOTE 4. DESCRIPTION OF HEADQUARTERS DEPARTMENTS AND DIVISIONS

President's Office - Responsible for: by-laws, amendments and revisions thereof, charters of local unions, Constitution of the International Union including interpretation and application to local unions, disciplinary trials procedures and appeals, elections of officers, law challenges and appeals, grievances of members, jurisdiction questions, mergers of chartered bodies, and administration of the International Union. Included within the President's Office are the Working Women's, Civil Rights and Community Relations, and Leadership Development Departments and the Research Office. The Working Women's Department provides information on women's affairs issues, assists in establishing retirees clubs and provides support to various International Union departments. The Civil Rights and Community Relations Department provides information on civil rights issues and assists various International Union departments. The Leadership Development Department processes scholarship applications and provides seminar planning, steward training, other educational programs. The Research Department provides assistance such as company profiles, financial analysis, economic data, economic dislocation assistance, industry trends and analysis and library services.

Secretary-Treasurer's Office - Assists in audits of local unions, bonding information, assists in establishing and training of business office procedures at local unions, informs and assists in data processing, assists in filing of government and Department of Labor reports, membership and per capita tax reports and other billings and administration issues of the International Union.

NOTE 4. DESCRIPTION OF HEADQUARTERS DEPARTMENTS AND DIVISIONS (CONTINUED)

Legal Department - Represents the International Union on legal issues, including collective bargaining, picketing, strikes, leafleting, organizing, ERISA, and race, sex, and age discrimination.

Health Care, Insurance, Finance and Professional Employees Division - Assists and provides information on collective bargaining, organizing, grievances, arbitrations and health and safety.

Manufacturing, Processing and Packinghouse - Assists and provides information on collective bargaining, organizing, grievances, arbitrations and health and safety. Also encompasses the Industrial Engineering Office which deals with plant time and motion studies.

Legislative and Political Department - Administers the Active Ballot Club and provides information and assistance on legislation and government regulations. Assists in voter registration and education and keeps abreast of congressional voting records.

Organizing Department - Assists its Local Unions in all aspects of day to day union operations including organizing activities, subsidies granted to Local Unions, and assistance with bargaining, grievances and arbitrations. Also, the department handles trusteeships of Local Unions and the staffing of personnel in the International's regional offices. Included within the Organizing Department are the Field Services Department and OSHA Office. Field Services supports local union member servicing activities and the OSHA Office provides occupational safety and health assistance.

Collective Bargaining Department - Assists and coordinates contract negotiations on behalf of Local Unions and administers strike sanctions, strike benefits, and assistance to Local Unions.

Negotiated Benefits Department - Provides technical support to local unions in health insurance and pension bargaining and consults with trustees of Taft-Hartley pension and health and welfare funds.

Strategic Programs - Coordinates organizing efforts and projects with either nationwide scope or industry wide implications.

International and Foreign Affairs - Provides International and foreign affairs support to various International Union departments.

Regional Offices - The International Union currently has offices in each region of the U.S. and Canada. Regional office expenses and salaries have been separately identified to each region.

**LOCAL 700 U.F.C.W.
DUES DISPUTE RESOLUTION PROCEDURE**

This Dues Dispute Resolution Procedure ("Resolution Procedure") shall apply to any non-member of Local 700 U.F.C.W. ("Local 700" or "Union") who challenges the Union's calculation of the reduced fee ("reduced fee") charged objecting non-members ("Challengers"). The reduced fee is the amount that objecting non-members are required to pay in support of activities related to collective bargaining and contract administration ("chargeable expenses"). All non-members shall be informed of the reduced fee. In the event of a challenge to the Union's calculation of the reduced fee, the following procedures shall apply:

1. The Challenger must notify Local 700, in writing, of their challenge within 30 days of the date after being notified of the reduced fee. Any challenge received by the Union after the 30 day period shall be considered null and void.
2. The Union shall respond within 15 days of receipt of the written challenge and provide the Challenger with sufficient information to determine the propriety of the Union's reduced fee.
3. In the event that the Challenger determines that the Union's response is unsatisfactory, the Challenger shall notify the Union, in writing, within 7 days of receipt of the Union's answer of the reason(s) for the challenge. The Challenger may then initiate arbitration by executing the attached Agreement to Arbitrate and return it to local 700. Thereafter, the Challenger shall request the American Arbitration Association ("AAA") to submit a panel of arbitrators to the parties. In no event shall arbitration be initiated earlier than 15 days following the mailing of the written challenge. The parties shall promptly proceed to select an arbitrator from the panel and proceed to arbitrate the challenge all in accordance with the rules of AAA applicable resolution of union fee disputes. The Union may consolidate any or all other challenges before

the arbitrator. The decision of the arbitrator is to be issued within sixty (60) days of hearing and the decision shall be final and binding on the parties.

4. Expenses incurred in connection with the arbitration, including fees of the AAA, the arbitrator's fees and expenses, and rental of the hearing room, if necessary, shall be paid by Local 700. The challenger will pay his own attorney's fees should he or she retain counsel.
5. The arbitrator's jurisdiction is limited to the propriety of the Union's calculation of the reduced fee.
6. As an alternative to voluntary arbitration, the Challenger may seek to resolve the dispute before a court of competent jurisdiction, or through the National Labor Relations Board.
7. Pending resolution of the challenge, the Challenger's reduced fee will be placed in an interest bearing escrow account, with directions to the account holder to pay the fee and any interest earned thereon in accordance with the resolution of the challenge.
8. Failure to comply with this Resolution Procedure shall render the challenge null and void.

FORM NLRB-508
(8-90)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
**CHARGE AGAINST
LABOR ORGANIZATION**

DO NOT WRITE IN THIS SPACE

Case

25-CB-8896

Date Filed

6/30/05

INSTRUCTIONS: File an original and 4 copies of this charge and an additional copy for each organization, each local, and each individual named in Item 1 with the NLRB Regional Director of the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name United Food & Commercial Workers Union Local 700

b. Union Representative to contact
C. Lewis Piercey, Presidentc. Telephone No.
(317) 248-0391d. Address (street, city, state and ZIP code)
5638 Professional Circle, Indianapolis, Indiana 46241-5092

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) (b)(1)(A) of the National Labor Relations Act. and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

UFCW Local 700 deliberately misled and failed to inform charging party of her right to be or remain a nonmember, and also misled and failed to inform charging party that as a nonmember she would have had the right (1) to object to paying for nonrepresentational activities and to receive a reduction in fees for such nonrepresentational activities; (2) to be given sufficient information to enable her to intelligently decide whether to object; and (4) to be apprised of any internal union procedures for filing objections.

UFCW Local 700 also failed to provide charging party with the percentage reduction in dues and fees for nonmember objectors. See *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000).

These and related actions restrain and coerce charging party in the exercise of her § 7 rights in violation of § 8(b)(1)(a) of the Act.

3. Name of Employer
Kroger

4. Telephone No. (765) 362-1084

5. Location of plant involved (street, city, state and ZIP code)
1660 Crawfordsville Square Drive, Crawfordsville, IN 479336. Employer representative to contact
Mike Smith7. Type of establishment (factory, mine, wholesaler, etc.)
Grocery store8. Identify principal product or service
Groceries/retail products9. Number of workers employed
Dozens

10. Full name of party filing charge Laura Sands

11. Address of party filing charge (street, city, state and ZIP code)
526 Valley Drive, Crawfordsville, IN 4793312. Telephone No.
(765) 364-1227

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By James Plunkett Attorney
(signature of representative or person making charge) (title or office, if any)
Address National Right to Work Legal Def. Fdn. (800) 336-3600 June 27, 2005
Suite 600, 8001 Braddock Rd., Springfield, VA 22160 (Telephone No.) (date)

JA-37

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

UNITED FOOD & COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 700
(KROGER LIMITED PARTNERSHIP I)

and

Case 25-CB-8896

LAURA SANDS
An Individual

COMPLAINT AND NOTICE OF HEARING

Laura Sands, an Individual, has charged that the United Food & Commercial Workers International Union, Local 700, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., herein called the Act. Based thereon the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by Laura Sands on June 30, 2005 and a copy was served by regular mail upon Respondent on July 1, 2005.

2. (a) At all material times Kroger Limited Partnership I, with its principal office in Cincinnati, Ohio, and numerous facilities located throughout the United States, including a facility located in Crawfordsville, Indiana herein called Respondent's facility, has been engaged in the retail sale of groceries, pharmaceuticals, and sundry goods.

(b) During the past twelve months, the Employer, in conducting its business operations described above in paragraph 2(a), purchased and received at its Crawfordsville, Indiana facility, goods valued in excess of \$50,000 directly from points outside the State of Indiana.

(c) At all material times the Employer has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

C. Lewis Piercey	-	President
Jeff Kimbrough	-	Business Representative

5. (a) At all material times since an unknown date prior to November 2, 2003, by virtue of Section 9(a) of the Act, Respondent has been the exclusive collective-bargaining representative of the employees of the Employer in the unit described in Article 2 of the most recent collective bargaining agreement between Respondent and the Employer, herein called the Unit.

(b) At all material times since November 2, 2003, Respondent and the Employer have maintained and enforced a collective-bargaining agreement as described above in paragraph 5(a) covering the Unit and containing the following conditions of employment, herein called the Union-Security Provision:

It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the execution date of this Agreement shall remain members in good standing and those who are not members on the execution date of this Agreement shall, on the thirty-first (31st) day following the execution date of this Agreement, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its execution date shall, on the thirty-first (31st) day following the beginning of such employment, become and remain members in good standing in the Union. The Employer may secure new employees from any source whatsoever. During the first thirty (30) days of employment, a new employee shall be on a trial basis and may be discharged at the discretion of the Employer. By mutual agreement between the Employer and the Union, such trial period may be extended for an additional thirty (30) day period probationary period. For the purpose of this paragraph, the execution date of this Agreement shall be considered its effective date.

(c) On about January 25, 2005, the Respondent advised Unit employee Laura Sands, by letter, regarding her financial obligation to Respondent but did not advise Sands of the percentage reduction in dues for employees who elect to become or remain nonmembers of Respondent.

6. By its conduct described above in paragraph 5(c), Respondent has failed to notify Unit employee Laura Sands of the percentage reduction in dues for employees who elect to become or remain nonmembers of Respondent pursuant to *Communications Workers v. Beck*, 487 U.S. 735 (1988).

7. By the conduct described above in paragraphs 5(c) and 6, Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

8. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

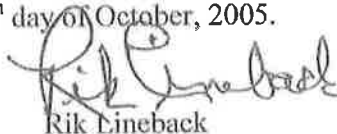
NOTICE OF HEARING

PLEASE TAKE NOTICE that on a date and at a time and place to be determined by subsequent Order, and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be received by this office on or before November 1, 2005. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties. The answer may not be filed by facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

DATED at Indianapolis, Indiana, this 18th day of October, 2005.



Rik Lineback

Regional Director
National Labor Relations Board,
Region Twenty-five
Room 238, Minton-Capehart Building
575 North Pennsylvania Street
Indianapolis, Indiana 46204-1577

Attachments

RL/fr

H:\complaint\8896.doc

JONATHAN D. KARMEL
JAIRUS M. GILDEN*
JOSHUA N. KARMEL
MINDY L. KALLUS**

*also admitted in Michigan
**also admitted in New York

LAW OFFICES OF
KARMEL & GILDEN
221 NORTH LA SALLE STREET
SUITE 1414
CHICAGO, ILLINOIS 60601
TELEPHONE (312) 641-2910
1-800-543-3984
TELECOPIER (312) 641-0781

OF COUNSEL
ROBERT KARMEL

VIA UNITED PARCEL SERVICE

October 28, 2005

Rik Lineback
Regional Director
National Labor Relations Board - Region 25
Room 238, Minton-Capehart Building
575 North Pennsylvania Street
Indianapolis, IN 46204-1577

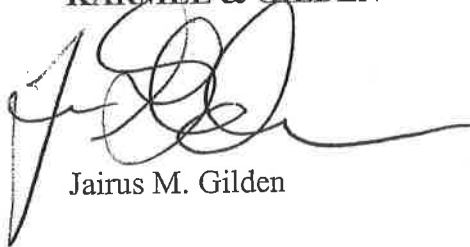
Re: UFCW Local 700 (Kroger Limited Partnership I) and Laura Sands
Case No. 25-CB-8896

Dear Mr. Lineback:

Enclosed is the Answer of UFCW Local 700 to the Complaint in the above captioned matter.

Very truly yours,

KARMEL & GILDEN



Jairus M. Gilden

JMG/jyr

Enclosure

cc: Lew Piercey - UFCW Local 700
James Plunkett

Kroger Ltd Partnership I \ Lineback 10-28-05

JA-41

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE**

**UNITED FOOD & COMMERCIAL WORKERS)
INTERNATIONAL UNION, LOCAL 700)
(KROGER LIMITED PARTNERSHIP I))
)**

and)

**LAURA SANDS)
An Individual)**

) Case No. 25-CB-8896

ANSWER TO COMPLAINT

NOW COMES Respondent, United Food and Commercial Workers Union, Local 700, through counsel, and hereby answers the Complaint filed in this matter as follows:

1. The charge in this proceeding was filed by Laura Sands on June 30, 2005 and a copy was served by regular mail upon Respondent on July 1, 2005.

ANSWER: Local 700 admits that the charge in this matter was filed on June 30, 2005. Local 700 denies that service occurred on July 1, 2005.

2. (a) At all material times Kroger Limited Partnership I, with its principal office in Cincinnati, Ohio, and numerous facilities located throughout the United States, including a facility located in Crawfordsville, Indiana herein called Respondent's facility, has been engaged in the retail sale of groceries, pharmaceuticals, and sundry goods.

ANSWER: Admitted, except that the facility located in Crawfordsville, Indiana is Employer's facility and not "Respondent's".

(b) During the past twelve months, the Employer, in conducting its business operations described above in paragraph 2(a), purchased and received at its Crawfordsville, Indiana facility, goods valued in excess of \$50,000 directly from points outside the State of Indiana.

ANSWER: Admitted.

(c) At all material times the Employer has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

ANSWER: Admitted.

JA-42

3. At all material times Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

ANSWER: Admitted.

4. At all material times the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

C. Lewis Piercey	-	President
Jeff Kimbrough	-	Business Representative

ANSWER: Admitted.

5. (a) At all material times since an unknown date prior to November 2, 2003, by virtue of Section 9(a) of the Act, Respondent has been the exclusive collective-bargaining representative of the employees of the Employer in the unit described in Article 2 of the most recent collective bargaining agreement between Respondent and the Employer, herein called the Unit.

ANSWER: Admitted.

(b) At all material times since November 2, 2003, Respondent and the Employer have maintained and enforced a collective-bargaining agreement as described above in paragraph 5(a) covering the Unit and containing the following conditions of employment, herein called the Union-Security Provision:

It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the execution date of this Agreement shall remain members in good standing and those who are not members on the execution date of this Agreement shall, on the thirty-first (31st) day following the execution date of this Agreement, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its execution date shall, on the thirty-first (31st) day following the beginning of such employment, become and remain members in good standing in the Union. The Employer may secure new employees from any source whatsoever. During the first thirty (30) days of employment, a new employee shall be on a trial basis and may be discharged at the discretion of the Employer. By mutual agreement between the Employer and the Union, such trial period may be extended for an additional thirty (30) day period probationary period. For the purpose of this paragraph, the execution date of this Agreement shall be considered its effective date.

JA-43

ANSWER: Admitted.

(c) On about January 25, 2005, the Respondent advised Unit employee Laura Sands, by letter, regarding her financial obligation to Respondent but did not advise Sands of the percentage reduction in dues for employees who elect to become or remain nonmembers of Respondent.

ANSWER: Local 700 admits Paragraph 5(c) inasmuch as it alleges that Laura Sands was notified on about January 25, 2005 of her financial obligations to Local 700. Local 700 denies all other allegations in Paragraph 5(c).

6. By its conduct described above in paragraph 5(c), Respondent has failed to notify Unit employee Laura Sands of the percentage reduction in dues for employees who elect to become or remain nonmembers of Respondent pursuant to *Communications Workers v. Beck*, 487 U.S. 735 (1988).

ANSWER: Denied.

7. By the conduct described above in paragraphs 5(c) and 6, Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

ANSWER: Denied.

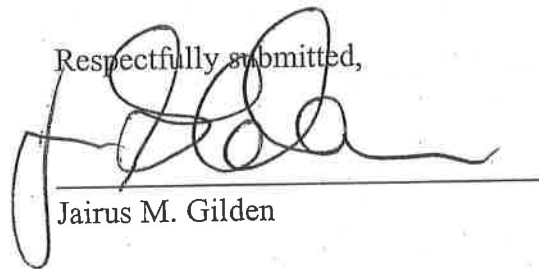
8. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER: Denied.

Affirmative Defense

1) The allegations contained in the Complaint in this matter are time-barred under Section 10(b) of the Act.

Respectfully submitted,



Jairus M. Gilden

KARMEL & GILDEN
221 North LaSalle Street
Suite 1414
Chicago, IL 60601
(312) 641-2910

JA-44

JUL-19-2007 15:38
07/13/2007 16:09 3126418

N.L.R.B. REG. 25

3:17 226 5015 P.03

JUL-10-2007 10:23

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

UNITED FOOD & COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 700
(KROGER LIMITED PARTNERSHIP I)

Case 25-CB-8896

and

LAURA SANDS
An Individual

JOINT MOTION AND STIPULATION OF FACTS

This is a joint motion by the parties to this case, Respondent, Charging Party and General Counsel, to submit this case to an Administrative Law Judge without a hearing by detailed stipulation of the parties pursuant to Section 102.35(a)(9) of the Board's Rules and Regulations. The submission of this case to an Administrative Law Judge by detailed stipulation will effectuate the purposes of the Act and avoid unnecessary costs and delay.

If this motion is granted, the parties agree to the following:

1. The record in this case consists of the Charge, the Complaint, the Answer, the Stipulation of Facts and accompanying exhibits, the Statement of Issues Presented, and each party's Statement of Position.
2. The parties waive a hearing in this matter and hereby submit the case to an Administrative Law Judge for issuance of findings of fact, conclusions of law and order.
3. The Administrative Law Judge should set a time for the filing of briefs.
4. The stipulation is made without prejudice to any objection that any party may have as to the relevancy of any facts stated herein.

JUL-13-2007 13:30
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312641

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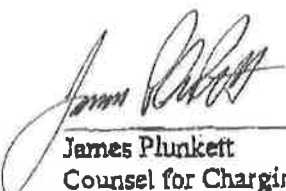
Dated at Indianapolis, Indiana on this 10th day of July, 2007.

Respectfully submitted by:

Michael Beck
Counsel for General Counsel



Jonathan Karmel
Counsel for Respondent



James Plunkett
Counsel for Charging party

JA-46

TOTAL P.04

TOTAL P.03

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APR-23-2007 12:58

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

UNITED FOOD & COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 700
(KROGER LIMITED PARTNERSHIP I)

Case 25-CB-8396

and

LAURA SANDS
An Individual

STIPULATIONS OF FACT

The undersigned parties hereby enter into the following stipulations of fact:

1. The parties hereby stipulate to the admission of Joint Exhibit 1, the relevant collective-bargaining agreement between United Food and Commercial Workers International Union Local 700 (hereinafter referred to as Respondent) and Kroger Limited Partnership I (hereinafter referred to as the Employer), into the record in this matter;
2. The parties hereby stipulate to the admission of Joint Exhibit 2, a four page document mailed by Respondent to Laura Sands (hereinafter referred to as the Charging Party) on or about January 11, 2005, into the record in this matter;
3. The parties hereby stipulate to the admission of Joint Exhibit 3, a three page document mailed by Respondent to the Charging Party on or at out January 25, 2005, into the record in this matter;

APR-23-2007 12:59 A.E. REG.25 317 226 5015 P.00

4. The parties hereby stipulate to the admission of Joint Exhibit 4, a document mailed by the Charging Party to Respondent on or about June 25, 2005, into the record in this matter;
5. The parties hereby stipulate to the admission of Joint Exhibit 5, a fifteen page document mailed by Respondent to the Charging Party on or about January 29, 2005, into the record in this matter;
6. The undersigned parties hereby stipulate to the following facts:
 - a. About December 2004, the Charging Party became an employee of the Employer at its facility in Crawfordsville, Indiana;
 - b. The employees at said facility were at the time the Charging Party became an employee of the Employer, and still are, represented for purposes of collective-bargaining by Respondent;
 - c. At all material times the Charging Party was an employee in the Unit described in paragraph 5(a) of the Complaint;
 - d. The collective-bargaining agreement between the Employer and Respondent which covered the employees at the facility in which the Charging Party was employed has been stipulated into the record in this matter as Joint Exhibit 1 and contains a valid union-security clause;
 - e. About January 11, 2005, Respondent, by a letter received by the Charging Party which has been stipulated into the record as Joint Exhibit 2, informed the Charging Party of the valid union-security clause in the collective bargaining agreement covering her and the other employees at

APR-23-2007 12:59

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3:7 226 5015 F.04

- the Crawfordsville facility and her duties and obligations under said clause;
- f. Said letter, admitted into evidence as Joint Exhibit 2, further informed the Charging Party, among other things, for the first time of her right to be and remain a non-member of the Union and to object to paying any dues or fees not germane to Respondent's duties as the exclusive collective-bargaining representative;
- g. At all material times Respondent has calculated the percentage by which objector's dues and fees are reduced if they object to paying any dues or fees not germane to Respondent's duties as the exclusive collective-bargaining representative or the full amount of dues or fees to which said reduction would be applied;
- h. At all times material, Respondent maintained thirty-six (36) separate dues rates, covering five (5) Kroger bargaining units, including nine (9) separate dues rates covering the Kroger Clerks and Meat bargaining units;
- i. About January 25, 2005, Respondent, by a letter received by the Charging Party which has been stipulated into the record as Joint Exhibit 3, again informed the Charging Party, among other things, of the valid union-security clause in the collective bargaining agreement covering her and the other employees at the Crawfordsville facility and her duties and obligations under said clause;
- j. Said letter, admitted into evidence as Joint Exhibit 3, further informed the Charging Party, among other things, of her right to be and remain a non-

member of the Union and to object to paying any dues or fee; not germane to Respondent's duties as the exclusive collective-bargaining representative;

- k. About January 31, 2005, the Charging Party completed and signed Respondent's application for membership and dues check-off authorization and returned both to Respondent;
- l. About June 25, 2005, the Charging Party, by a letter received by Respondent which has been stipulated into the record as Joint Exhibit 4, informed Respondent that she was resigning her membership in Respondent and objecting to paying any dues or fees not germane to Respondent's duties as the exclusive collective-bargaining representative;
- m. About June 29, 2005, Respondent, by a letter received by the Charging Party which has been stipulated into the record as Joint Exhibit 5, accepted the Charging Party's resignation from Respondent and for the first time informed the Charging Party of the percentage her dues would be reduced and the dollar amount of said reduced dues since she objected to paying any dues or fees not germane to Respondent's duties as the exclusive collective-bargaining representative along with information on how that percentage was calculated and how she could file an appeal regarding the percentage.
- n. The Charging Party did not appeal the dues calculations set forth in Respondent's June 29, 2005 letter.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD



United Food & Commercial Workers
International Union, Local 700 (Kroger
Limited Partnership I)

Case 25-CB-8896

and
Laura Sands
an individual

**Charging Party's Exceptions Filed to ALJ Decision and
Memorandum in Support Thereof**

Charging Party Laura Sands hereby files the following exceptions to Administrative Law Judge ("ALJ") Miserendino's Decision of March 7, 2008 in Case No. 25-CB-8896. Charging Party's arguments in support of her exceptions are stated in her attached brief.

The following abbreviations shall be used herein. The ALJ's decision of March 7, 2008 shall be referred to as "ALJ Op." Respondent United Food & Commercial Workers International Union, Local 700, shall be referred to as "Local 700," or "Union."

Sands hereby files exceptions to the following decisions of the ALJ:

- 1 That Local 700's conduct, in failing to notify the charging party of the percentage reduction, along with the full dues amount, of objecting nonmembers' compulsory fees, did not violate the Act. ALJ Op. 5:39 to 6:38

- 2 Failure to find that *Teamsters Local Union No. 579 (Chambers & Owen, Inc.)*, 350 NLRB No. 87 (2007), required the respondent union to provide to the charging party the percentage reduction of objector fees when it first sought to compel her to join or pay fees under the forced unionism clause. *Id.*
- 3 Failure to find that *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000), required the respondent union to provide to the charging party the percentage reduction of objector fees when it first sought to compel her to join or pay fees under the forced unionism clause. *Id.*
- 4 That charging party's resignation and objection in June of 2005 relieved the union of its obligation to provide the charging party with the percentage reduction of objector fees when it first sought to compel her to join or pay fees under the forced unionism clause. ALJ Op. 6:21 to 6:35
- 5 That the facts do not support the conclusion that the union's procedure impedes a nonmember employee from exercising his or her *Beck* rights and interferes with the statutory right under Section 7 to refrain from assisting a union. *Id.*
- 6 Failure to find that requiring a Union's "initial *Beck* notice" to include the percentage reduction for objector fees is not onerous or burdensome. ALJ Op. 5:39 to 6:38

Respectfully submitted this 3rd day of April, 2008.

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Memorandum in Support of Exceptions

I. Introduction.

The sole issue in this case is whether a labor union, when seeking to collect compulsory fees from employees pursuant to a forced unionism clause, can withhold from potential objectors the percentage reduction for objector fees in its “initial notice” required by *Communication Workers v. Beck*, 487 U.S. 735 (1988). In his decision of March 7, 2008, ALJ Miserendino found that Respondent Union did not violate the Act when it withheld this information from Charging Party in its initial *Beck* notice. Charging Party submits this brief in support of her attached exceptions to the ALJ’s decision.

II. The Facts.

The facts are not in dispute in this case. Respondent Union, United Food & Commercial Workers International Union, Local 700 (hereinafter “Respondent”, “Union” or “Local 700”) has entered into a collective bargaining agreement with Kroger Limited Partnership I (hereinafter “employer” or “Kroger”) that requires all bargaining unit employees, as a condition of employment, to join or pay fees to the union. (ALJ Op. at 2). Sometime in December, 2004, the Charging Party became employed at Kroger’s facility in Crawfordsville, Indiana. *Id.* In two letters sent to the Charging Party in January 2005, Respondent Union demanded that the Charging Party join the union or pay fees to the union but failed to advise her of the percentage reduction in fees for employees who elect to become or remain objecting

nonmembers of the union. (Stip., ¶ 6).

Because Respondent did not provide the percentage reduction for *Beck* objectors, the Charging Party filed unfair labor practice charges.¹ The General Counsel subsequently issued a complaint, alleging that Respondent “failed to notify Unit employee Laura Sands of the percentage reduction in dues for employees who elect to become or remain nonmembers of Respondent pursuant to *Communication Workers v. Beck*, 487 U.S. 735 (1988).” The complaint further alleges that, by this omission, Respondent “has been restraining and coercing employees in the exercise of the rights guaranteed in § 7 of the Act in violation of § 8(b)(1)(A) of the Act.”

III. Background.

In *Beck*, the Supreme Court ruled that “§ 8(a)(3), like its statutory equivalent, § 2, Eleventh of the [Railway Labor Act (“RLA”), 45 U.S.C. § 152, Eleventh (1988)], authorizes the exaction of only those fees and dues necessary to ‘performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.’” 487 U.S. at 762-63 (quoting *Ellis v. Railway Clerks*, 466 U.S. 435, 448 (1984)). In other words, under *Beck*, a compulsory unionism clause cannot be used to require employees, as a condition of employment, “to support union activities beyond those germane to collective bargaining, contract administration, and grievance adjustment.” 487 U.S. at 745.

The judicially-created duty of fair representation standard governs a union’s

¹ The unfair labor practice charges included other allegations that are not at issue here.

obligations towards nonmembers when the union forces them to pay fees under a compulsory unionism clause. *See California Saw & Knife Works*, 320 NLRB 224, 229-30 (1995). The duty of fair representation is breached when a union's actions towards the employees it represents are arbitrary, discriminatory, or in bad faith. *See Vaca v. Sipes*, 386 U.S. 171, 177 (1967). As the U.S. Court of Appeals explained in *Abrams v. Communications Workers*, 59 F.3d 1373, 1377 (D.C. Cir. 1995), a "union's fair representation duty in the context of a mandatory agency fee hinges on its compliance with section 8(a)(3) of the NLRA" as interpreted by the Supreme Court in *Beck*.

The Board has determined that the duty of fair representation requires unions to establish a notification process to ensure that nonmembers' *Beck* rights are preserved. *See California Saw*, 320 NLRB at 233. This process requires a union, when or before it seeks to collect fees pursuant to a compulsory unionism clause, to inform employees of their rights: (1) to be or remain nonmembers; (2) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (3) to be given sufficient information to enable them to intelligently decide whether to object; and (4) to be apprised of any internal union procedures for filing objections. *See id.*

Once a nonmember objects to funding union activities that are unrelated to collective bargaining, the union must then refrain from charging him for those expenses. Additionally, the union must notify the objector of the percentage of

reduction in fees, the basis for the union's calculation, and that the objector has a right to challenge these figures. *See id.*; see also *International Brotherhood of Teamsters Local Union 492 (United Parcel Service, Inc.)*, 346 NLRB No. 37, at *6 (2006).

The issue in this case concerns what type of information must be included in the union's initial notice to employees to enable employees to intelligently exercise their § 7 rights to choose or not choose union membership. Under *California Saw*, unions have been permitted to withhold from their initial notice to potential objectors the amount that the compulsory fees would be for nonmember objectors. 320 NLRB at 233.

Thus, under *California Saw*, labor unions have been allowed to keep employees in the dark regarding the percentage reduction of objector fees when they make their decision whether or not to choose nonmembership and pay reduced fees. *See id.* That has meant that potential objectors are not entitled to know the amount of their potential reduction. Only *after* an employee makes the difficult decision of becoming a nonmember objector is he or she entitled to information concerning the financial ramifications of that decision.

IV. Basic Considerations of Fairness Require a Union's "Initial *Beck* Notice" to Include the Percentage Reduction for Objector Fees (Exceptions 1 - 3).

Unfortunately, the ALJ's decision in this case, and *California Saw's* holding regarding the union's initial notice, disregard the United States Supreme

Court's decision in *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 306 (1986), which ruled that:

Basic considerations of fairness ... dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee. Leaving the nonunion employees in the dark about the source of the figure for the agency fee — and requiring them to object in order to receive information — does not adequately protect the careful distinctions drawn in *Abood* [*v. Detroit Board of Education*, 431 U.S. 209 (1977)].

Thus, *Hudson* requires a union to provide new hires and nonmembers with specific information about the amount of the union's reduced fee calculation *before* they must elect membership or nonmembership status or file an objection to supporting political activities under *Beck*.

Hudson's clear directive is why many courts have determined, contrary to *California Saw*, that notice of the percentage reduction must be given to the employee in *advance* of his or her decision to choose membership or nonmembership. See *Penrod v. NLRB*, 203 F.3d 41, 47-48 (D.C. Cir. 2000) ("new employees and financial core payors . . . must be told the percentage of union dues that would be chargeable were they to become *Beck* objectors"); see also *Tierney v. City of Toledo*, 824 F.2d 1497, 1503 (1987) (quoting *Hudson*, 475 U.S. at 306) ("*Hudson* admonishes the union to give 'potential objectors ... sufficient information to gauge the propriety of the union's fee' before it collects any fee from non-members.... This information must also be disclosed to all non-members whether or not they have yet objected to the union's ideological expenditures");

Damiano v. Matish, 830 F.2d 1363, 1370 (6th Cir. 1987) (the notice must be provided to all potential objectors in advance, and it “must inform the non-union employee as to the amount of the service fee, as well as the method by which that fee was calculated”).

The Board’s rulings in *California Saw* were premised on its conclusion “that public sector and RLA precedents premised on constitutional principles are not controlling in the context of the NLRA.” 320 NLRB at 226. However, more recently, the Board has determined that *Hudson*’s constitutionally based standards concerning notice apply to private-sector union disclosure requirements under *Beck*. See *Teamsters Local Union No. 579 (Chambers & Owen, Inc.)*, 350 NLRB No. 87 (2007)(3-2 decision). In light of this recent decision in *Chambers & Owen* and the appellate decisions discussed above, the Board should reconsider *California Saw*’s ruling as to initial notice and apply *Hudson*’s clear mandate regarding a union’s initial disclosure obligations under the Act.

Chambers & Owen concerned the type of disclosure unions are obligated to provide to employees who have filed objections. *Hudson* and its progeny require unions to provide *Beck* objectors with information concerning union affiliate expenditures. See 475 U.S. at 307 fn. 18. Previous Board policy did not require this disclosure. See *Teamsters Local 166 (Dyncorp Support Services)*, 327 NLRB 950 (1999). In *Chambers & Owen*, the Board overturned its policy and determined that *Hudson* and *Penrod* are dispositive in addressing a union’s disclosure

requirements under duty of fair representation principles. *See* 350 NLRB No. 87, slip op. at 4-5. Under *Chambers & Owen*, unions are now required to provide objectors with proper disclosure concerning union affiliates. *See id.*

The Board based its decision in *Chambers & Owen* on *Hudson*'s fairness requirement. *See id.* *Hudson*, as the Board explained, did not just rely on the First Amendment rights of employees, but "also relied on '[b]asic considerations of fairness' in emphasizing the fundamental importance of providing adequate information regarding dues and fees reductions to nonmember objectors." *Id.*, slip op. at 4. In *Chambers & Owen* the Board ruled, "Where, as here, we are dealing with an employee's Section 7 right to refrain from union activities, we believe that the concept of 'fairness' fits comfortably within the duty of fair representation." *Id.*, at 5.

In applying *Hudson* standards to private-sector workers in *Chambers & Owen*, the Board adopted principles that have already been accepted by the federal courts. *See Abrams v. CWA*, 59 F.3d at 1377-81; *Ferriso v. NLRB*, 125 F.3d 865, 867-70 (D.C. Cir. 1997); *Miller v. Air Line Pilots Ass'n*, 108 F.3d 1415, 1419-20 (D.C. Cir. 1997), *aff'd on other grounds*, 523 U.S. 866 (1998). Indeed, the court in *Abrams* was clear regarding the application of *Hudson* to a union's required disclosure under the Act:

Although in *Hudson* the challenge to the union agency fee was made on constitutional grounds, its holding on objection procedures applies equally to the statutory duty of fair representation inasmuch as the holding is rooted in "[b]asic considerations of fairness, as well as concern for the First

Amendment rights at stake.”

59 F.3d at 1379 n.7 (quoting *Hudson*, 475 U.S. at 306). Shortly thereafter, *Miller* held: “[w]e see no reason why this statutory duty of fair representation owed to nonmember agency shop employees carries any fewer procedural obligations than does a constitutional duty.” 108 F.3d at 1420. Finally, the court in *Ferriso* determined that “this circuit has found that the content of the NLRA’s duty of fair representation is guided by the standards of *Hudson*.” 125 F.3d at 868.²

Unfortunately, the ALJ erred in failing to apply the Board’s reasoning in *Chambers & Owen* to the union’s disclosure requirements in the instant case. The ALJ distinguished *Chambers & Owen* on its facts, simply stating that it “did not address the issue of whether a union is required to provide a potential *Beck* objector with financial information in the initial *Beck* notice.” (ALJ Op. at 6). This cramped reading of *Chambers & Owen* ignores the decision’s underlying rationale that *Hudson* is “dispositive in addressing a union’s requirement under duty of fair

² Even in *California Saw*, the Board emphasized the importance of *Hudson*’s fairness requirement in evaluating the adequacy of a union’s notice:

The Court’s holding in *Hudson* requiring notice to nonmember employees regarding the basis for the proportionate share charged to them was thus not rooted solely in [F]irst [A]mendment considerations. Rather, the Court’s notice holding was additionally premised on basic considerations of fairness, which clearly implicate a union’s statutory obligations as well. We are convinced that the Court’s explicit articulation of this broader rationale demonstrates that the Court’s concern that nonunion employees not be left “in the dark about the source of their agency fee” was not entirely limited to the constitutional context, but is also a relevant concern in the context of a private sector union’s duty of fair representation.

320 NLRB at 232.

representation principles to **provide information** to *Beck* objectors.” See 350 NLRB No. 87, slip op. at 5. (emphasis added). The ALJ’s ruling also ignores the fact that *Chambers & Owen* followed *Penrod* in overruling *Dyncorp*. See *id.*, at 4-5.

Contrary to the ALJ’s decision, the Board in *Chambers & Owen* did not limit *Hudson*’s application only to affiliate disclosure, but instead viewed *Hudson* as applicable to all instances in which a union has a duty to provide information to nonmembers. See *id.*, at 4 (discretion granted to unions “does not extend to conduct that contravenes *Hudson* and denies to nonmember objectors information essential to the exercise of their *Beck* and statutory rights”).

Therefore, basic considerations of fairness require a union, in its initial notice to employees, to disclose the percentage of union dues that would be chargeable were the employees to become *Beck* objectors, as *Penrod* held. 203 F.3d at 47-48. The same disclosure standards that the Board recently applied in *Chambers & Owen* should be applied in the instant case.

V. Requiring a Union’s “Initial *Beck* Notice” to Include the Percentage Reduction for Objector Fees is Consistent With the Act’s Policy of Voluntary Unionism (Exceptions 1 - 3, 5).

California Saw’s limitation of a union’s initial notice obligations mistakenly disregards employees’ fundamental § 7 right to freely choose union membership or nonmembership. See *Pattern Makers League v. NLRB*, 473 U.S. 95, 104 (1985) (the policy of the NLRA is “voluntary unionism”); *Bloom v. NLRB*, 153 F.3d 844, 849-50 (8th Cir. 1998) (“Enlisting in a union is a wholly voluntary

commitment; it is an option that may be freely undertaken or freely rejected”),
vacated and remanded on other grounds sub nom. OPEIU Local 12 v. Bloom, 525
U.S. 1133 (1999). An employee simply cannot make an informed choice between
membership and nonmembership when he or she is kept in the dark about the
financial consequences of that decision.

The decision to refrain from union membership and submit a *Beck* objection
carries with it serious legal consequences. Nonmembers are prohibited from
participating in contract ratification elections, strike votes, and similar matters that
directly affect their own terms and conditions of employment. *See Kidwell v.*
Transportation Communications Int’l Union, 946 F.2d 283 (4th Cir. 1991).
Moreover, unions often discriminate against nonmembers and treat their grievances
less favorably. *See, e.g., International Union, UAW v. NLRB*, 168 F.3d 509 (D.C.
Cir. 1999) (UAW discriminates against nonmembers by refusing to allow them to
invoke its “internal” grievance system); *American Postal Workers Union*, 328
NLRB No. 37 (1999) (union violated the NLRA by refusing to process a grievance
once it learned that the employee was a nonmember).

Thus, it may matter greatly to an employee called upon to make this critical
decision whether his or her agency fee reduction will be approximately 20%, as in
Abrams v. CWA, 818 F. Supp. 393, 397 (D.D.C. 1993), 90% as was finally
adjudicated in *Lehnert v. Ferris Faculty Ass’n*, 643 F. Supp. 1306, 1334-35 (W.D.
Mich. 1986), *aff’d*, 881 F.2d 1388 (6th Cir. 1989), *aff’d in part, rev’d in part*, 500

U.S. 507 (1991), or 13.9% claimed by the Respondent in the instant case. To be able to make a free and intelligent choice about an issue that may well affect their entire working lives, employees are entitled to specific information in *advance* about their own potential fee obligation, not after they have already made their decision.

Consequently, *Penrod* held, “*Hudson* carries with it the requirement that unions give employees ‘sufficient information to gauge the propriety of the union’s fee’ - i.e., the percentage reduction.” 203 F.3d at 48 (quoting *Hudson*, 475 U.S. at 306). “[F]or how else could they ‘gauge the propriety of the union’s fee’”? *Id.* at 47.

Respondent Union’s procedure, and Board precedent prior to *Chambers & Owen*, actually impede a nonmember employee from exercising his or her rights under *Beck* and infringes on his or her § 7 right to refrain from joining or assisting a union. *See Chambers & Owen*, 350 NLRB No. 87, slip op. at 4. The effect is to diminish the rights of nonmembers in order to protect unions. This should not be the case, because “[b]y its plain terms . . . the NLRA confers rights only on employees, not on unions or their nonemployee organizers.” *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 532 (1992).

VI. The ALJ Erred in Finding that Charging Party’s Resignation Relieved the Union of Its Obligation to Provide to the Charging Party the Percentage Reduction of Forced Objector Fees in its Initial Notice (Exceptions 4-5).

The ALJ noted that the Charging Party resigned and objected “without any financial information other than the amount of union member dues.” The ALJ

concluded that this somehow obviated the need for the union to provide the amount of the reduced objector fee amount in its initial notice to employees. (ALJ Op. at 6). This conclusion is erroneous. The Charging Party was forced to make her decision in the dark, as she had no idea what the reduced fees would be. That the Charging Party resigned and objected based on inadequate information does not justify the union's failure to provide adequate information in the first place. Successful overcoming of a hurdle to the exercise of a statutory right does not mean that the hurdle is lawful.

Employees choose to join or not join a union – or resign and object from a union – for many reasons. The law must be fashioned in a way as to make this vital decision free of confusion and coercion. *See Hudson*, 475 U.S. at 306-07 (condemning the union practice of keeping nonmembers “in the dark”). Perhaps the Charging Party would have resigned earlier or not joined the union at all if the union had told her the reduced fee amount initially. Depriving the Charging Party of this information served as an impediment to her exercising her § 7 rights, as she remained a union member for several months, during which she paid full union dues and was vulnerable to union discipline.

VII. The ALJ Erred in Failing to Find That Requiring a Union's “Initial Beck Notice” to Include the Percentage Reduction for Objector Fees is Not Onerous or Burdensome (Exception 6).

In its brief to the ALJ, the Respondent Union argued that providing the percentage reduction of objector fees – a single number – in its initial notice is too

burdensome. The ALJ erred in failing to find that this argument is without merit, because the Board recently rejected it as to a more burdensome disclosure requirement in *Chambers & Owen*, 350 NLRB No. 87, slip op. at 4:

[T]here is little reason to believe that the administrative burdens faced by unions in complying with *Beck* and *Hudson* by providing affiliate expenditure data will prove particularly onerous. Private sector unions have long known that they may charge nonmember objectors only for representational activities, and that unions must account to objectors for the way they spend their dues money. In turn, advances in computer and internet technology over the last decade have facilitated compliance with disclosure requirements under the Board's *Beck* decisions, and other regulatory disclosure requirements already require unions to publicly report the sort of information involved here.

Moreover, Respondent's argument ignores federal court decisions like *Andrews v. Cheshire Education Ass'n*, 829 F.2d 335, 339 (2d Cir. 1987), which held that

the procedures mandated by *Hudson* are to be accorded all nonmembers of agency shops regardless of whether the union believes them to be excessively costly. Excessive cost cannot form the basis for allowing the union or the government to avoid *Hudson's* requirements.

See also *Hudson*, 475 U.S. at 306 n.17 (citation omitted) ("that private sector unions have a duty of disclosure [under the LMRDA] suggests that a limited notice requirement does not impose an undue burden on the union"); *Beck*, 487 U.S. at 755 ("congressional opponents of the Taft-Hartley Act's union-security provisions understood the Act to provide only the most grudging authorization of such agreements, permitting 'union-shop agreement[s] only under limited and administratively burdensome conditions'"); *Robinson v. Pennsylvania State*

Corrections Officers Ass'n, 299 F.Supp.2d 425, 429 (M.D.Pa. 2004)("[t]he inability of an entity to meet constitutional prerequisites does not relieve it of the burden but, instead, precludes the entity from acting").

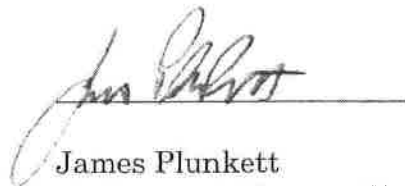
Employees' § 7 right to make a free and informed choice to join a union or refrain from membership is worth any additional costs which a union could conceivably incur in giving a complete "initial *Beck* notice" to potential objectors. Moreover, any additional costs to the Respondent in this case would be negligible, as this information was readily available to the union. (Stip., at ¶ 6(g)). Indeed, if a union is forced to shoulder this slight additional burden, it is solely as a result of its own *voluntary* decision to seek compulsory fees from nonmembers in the first place. *See Tierney v. City of Toledo*, 824 F.2d at 1503 n.2 (the detailed notice and disclosure requirements of *Hudson* do not impose an undue burden on a union, because "the union triggers no disclosure requirement until it voluntarily seeks to collect service fees from the non-union members").

VIII. Conclusion.

It is clear that providing employees with the percentage reduction of nonmember fees only *after* they choose to become objecting nonmembers runs contrary to the Supreme Court's decision in *Hudson*, the D.C. Circuit's decision in *Penrod*, and the Board's decision in *Chambers & Owen* – as well as the underlying policy of the Act. Consequently, the Board should require unions to provide potential objectors the percentage reduction of objector fees when it first seeks to

compel them to join or pay fees under a forced unionism clause. Overruling *California Saw* in this one aspect would effectuate the policy of voluntary unionism that is the Act's cornerstone. See, e.g., *Pattern Makers*, 473 U.S. 95 (1985). Therefore, it is respectfully requested that the Board reverse the ALJ's decision and hold that Respondent Union violated § 8(b)(1)(A) of the Act by not providing Charging Party the percentage reduction of an objector's fees when it first sought to compel her to join or pay fees under its forced unionism clause.

Dated: April 3, 2008



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Certificate of Service

I hereby certify that on April 3, 2008, I caused the foregoing exceptions and brief to be served on the parties listed below by causing the document to be deposited in the United States mail, postage prepaid, addressed to the following:

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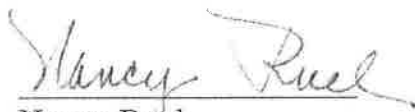
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April 3, 2008



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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED FOOD & COMMERCIAL
WORKERS INTERNATIONAL UNION,
LOCAL 700 (KROGER LIMITED
PARTNERSHIP I)

Case No. 25-CB-8896

and

LAURA SANDS
An Individual

**LOCAL 700'S ANSWERING BRIEF TO EXCEPTIONS FILED
BY THE GENERAL COUNSEL AND THE CHARGING PARTY**

United Food and Commercial Workers Union Local 700 ("Union" or "Local 700") submits the instant answering brief to the exceptions filed by the General Counsel and the Charging Party, Laura Sands.

**I.
THE ALJ'S DECISION WAS CORRECT**

On March 7, 2008, the Administrative Law Judge, C. Richard Miserendino, issued a decision in this case, finding that Local 700 did not act in an arbitrary or discriminatory fashion or in bad faith so as to violate Section 8(b)(1)(A) of the Act when it failed to include in the initial Beck notice to Laura Sands the amount of full union dues and the percentage reduction in dues that an objecting member would receive. The law is clear with regard to the initial notice unions must provide to new employees. New employees are required to receive an initial notice informing them of their right not to become union members; of their right not to pay full union dues and fees; and of their right to object to payment of full dues and fees. California Saw & Knife Works, 320 NLRB 224, 233 (1995).

The ALJ correctly concluded that Local 700 fully complied with the above-described requirements.

II.
THE BOARD'S DECISION IN
CHAMBER & OWENS DOES
NOT ESTABLISH A BASIS FOR
FINDING A VIOLATION

The Board's decision in Teamsters Local Union No. 579 (Chamber & Owens, Inc.), 350 NLRB No. 87 (2007) does not warrant a different decision in this case. The issue before the Board in Chamber & Owens, Inc., was how much information a union is required to furnish a Beck objector at the second stage of the Beck objections procedure in order for the objector to decide whether or not to challenge the Unions' reduced fee computations. The Board did not there address the financial information the union is required to provide a potential Beck objector – an issue that was squarely addressed in California Saw & Knife Works, supra.

III.
THE SUPREME COURT'S OPINION
IN HUDSON IS UNAVAILING

The Charging Party and the General Counsel seek to rely upon Chicago Teachers Union Local No. 1 v. Hudson, 475 U.S. 292 (1986) for the proposition that notice of the percentage reduction of dues must be given to all potential objectors. Significantly, Hudson was a case involving public sector employees and First Amendment rights and was decided prior to Beck. Hudson, moreover, also concerned nonunion employees who had already qualified for reduced fees and the Supreme Court addressed the amount of information needed to determine whether to object further to the union's apportionment of chargeable and nonchargeable activities. See Abrams v.

Communications Workers of America, 59 F.3d 1373, 1383 (D.C. Cir. 1995) (dissenting opinion).

CONCLUSION

For all of the foregoing reasons, the Board should deny the exceptions filed by the General Counsel and the Charging Party and affirm the decision of the Administrative Law Judge.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and accurate copies of Local 700's Answering Brief to Exceptions Filed by the General Counsel and the Charging Party to the Administrative Law Judge's Decision was served on the following parties by DHL Overnight Express on April 16, 2008:

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The undersigned hereby certifies that true and accurate copies of Local 700's Answering Brief to Exceptions Filed by the General Counsel and the Charging Party to the Administrative Law Judge's Decision was served on the following parties by regular United States mail on April 16, 2008:


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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD



United Food & Commercial Workers
International Union, Local 700 (Kroger
Limited Partnership I)

Case 25-CB-8896

and
Laura Sands
an individual

Charging Party's Reply to Answer Filed By UFCW Local 700

Charging Party Laura Sands hereby files the following Reply to the United Food and Commercial Workers Union Local 700's ("Local 700" or "union") Answer to her Exceptions filed to Administrative Law Judge ("ALJ") Miserendino's Decision of March 7, 2008 in Case No. 25-CB-8896.

I. The Board's Decision in *Chambers & Owen* is Not Limited to its Facts.

Local 700 takes an incorrect and cramped view of *Teamsters Local Union No. 579 (Chambers & Owen, Inc.)*, 350 NLRB No. 87 (2007), by completely ignoring the Board's rationale in that case. The Board did not limit its decision in *Chambers & Owen* to the facts, but instead discusses at length a union's general notice obligations toward nonmembers when it seeks to enforce a compulsory unionism clause. In ruling that the union violated the Act by failing to provide the charging party with proper financial disclosure concerning the expenditures of its affiliates, the Board based its decision in that case on the fairness requirement announced in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986).

Hudson, as the Board explained, did not just rely on the First Amendment rights of employees, but “also relied on ‘[b]asic considerations of fairness’ in emphasizing the fundamental importance of providing adequate information regarding dues and fees reductions to nonmember objectors.” *Chambers & Owen, Inc.*), 350 NLRB No. 87, slip op. at 4. The Board went on to state, “Where, as here, we are dealing with an employee’s Section 7 right to refrain from union activities, we believe that the concept of ‘fairness’ fits comfortably within the duty of fair representation.” *Id.*, at 5.

Because *Hudson*’s concept of fairness fits within the duty of fair representation, it must apply to *all* aspects and “stages” of Local 700’s compulsory fee collection procedure.¹ Local 700 cannot pick and choose when and where it owes a duty of fair representation to nonmembers who are forced to pay fees as a condition of employment. Simply put, Local 700 completely ignores the fact that in *Chambers & Owen* the Board accepted the principle that *Hudson* controls as to what notice and other procedural rights are due a nonmember under *Communication Workers v. Beck*, 487 U.S. 735 (1988).

II. *Penrod* Applies to Union Financial Disclosure.

In a recent decision, the D.C. Circuit once again applied *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000) to an issue involving a union’s financial disclosure to

¹ Furthermore, because *Hudson*’s rationale fits within the union’s duty of fair representation, Local 700’s attempt to distinguish *Hudson* falls flat. See *Abrams v. Communications Workers*, 59 F.3d 1373, 1379 n. 7 (D.C. Cir. 1995)(*Hudson*’s “holding on objection procedures applies equally to the statutory duty of fair representation”).

nonmembers. *See Pirlott v. NLRB*, No. 07-1025, slip op. (D.C. Cir. April 18, 2008).

In *Pirlott*, the court reversed the NLRB's holding that the union's cursory financial disclosure was adequate, in light of *Penrod*:

Because *Penrod* was decided after the Board made its determination in this case that the Union's disclosures were adequate, *Penrod* did not figure into the Board's disposition of that issue. We therefore vacate the Board's order with respect to the financial disclosures and remand to the Board to allow it to reconsider whether the Union fulfilled its obligation to provide adequate financial disclosure.

Slip op. at 13.


Moreover, in *Pirlott*, the Board agreed and acknowledged that *Penrod* should control a union's financial disclosure obligations owed to nonmembers. Indeed, the Board as Respondent, and the union "agree[d] that the Board's decision [that] the Union's financial disclosures were adequate should be vacated in light of *Penrod*." *Id.* As in *Pirlott*, the Board here should follow *Penrod* and require unions to provide potential objectors the percentage reduction of objector fees when it first seeks to compel them to join or pay fees under a forced unionism clause. *See Penrod*, 203 F.3d at 47-48 ("new employees and financial core payors . . . must be told the percentage of union dues that would be chargeable were they to become *Beck* objectors").

III. Conclusion.

Local 700's Answer fails grasp the fact that in *Chambers & Owen*, the Board determined that *Hudson*'s constitutionally based standards concerning notice apply to private-sector union disclosure requirements under *Beck*. Therefore, it is

respectfully requested that the Board reverse the ALJ's decision and hold that Respondent Union violated § 8(b)(1)(A) of the Act by not providing Charging Party the percentage reduction of an objector's fees when it first sought to compel her to join or pay fees under its forced unionism clause.

Dated: April 30, 2008



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**United Food & Commercial Workers International
Union, Local 700 (Kroger Limited Partnership)
and Laura Sands. Case 25-CB-008896**

September 10, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA,
HIROZAWA, JOHNSON, AND SCHIFFER

This case concerns the timing of a union's notification to employees subject to a union-security clause of the specific amount of reduced fees and dues they would pay if they become nonmembers and object to paying for union activities not germane to its duties as their collective-bargaining representative. Under established Board precedent, a union is not required to calculate and provide such detailed information until an employee elects nonmember status and then takes the additional step of objecting to paying for nonrepresentational expenses. Here, the Union properly relied on that precedent when it did not advise the Charging Party of the specific amount of the reduced dues and fees applicable to nonmember objectors upon her hire by Kroger Limited Partnership (Employer), but did timely provide her with that information once she resigned her membership and requested objector status. The General Counsel and the Charging Party concede that the Union complied with Board law, but nevertheless argue that we should overrule that precedent. They urge us to hold that the duty of fair representation requires every union to provide each one of its represented employees with specific reduced payment information when the union first informs the employee of her obligations under a union-security clause, even in the absence of an employee request for information about or objection to the union's regular fees and dues. The Charging Party argues that decisions of the Supreme Court and the United States courts of appeals compel us to make this change. We have carefully considered these arguments. We have concluded, however, that the Board's established rule is not only permissible, but also that it strikes the most reasonable balance between the competing interests at stake. Accordingly, we have decided to adhere to our precedent.¹

¹ On March 7, 2008, Administrative Law Judge C. Richard Miserendino issued the attached decision. The General Counsel and the Charging Party filed exceptions, the Respondent filed an answering brief, and the Charging Party filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to af-

I.

In revisiting this issue, we are mindful that the United States Court of Appeals for the District of Columbia Circuit has reached a different conclusion. That court has concluded that a union must provide specific reduced payment information to all employees when it initially notifies them of their obligations under a union-security clause.² But, in examining the court's rationale, we believe the court erroneously read the Supreme Court's decision in *Chicago Teachers Union, Local 1 v. Hudson*, 475 U.S. 292 (1986), to compel the result it reached. Below, we explain why we believe *Hudson* in fact does not compel a particular result on this issue. Then, applying the duty of fair representation standard,³ we examine new employees' need for detailed reduced payment information before they have asserted their right to be a nonmember objector. We then consider the burden on unions to calculate and provide that information in their initial notices to employees. Finally, we explain why, in our view, the balance of interests does not warrant compelling unions to include more specific reduced payment information in those initial notices.

II.

The facts are undisputed.⁴ The Union is the exclusive bargaining representative of multiple bargaining units of employees of the Employer. The Union and the Employer were parties to a collective-bargaining agreement that required, as a condition of employment, that all bargaining unit employees join or pay fees to the Union. The Employer hired Charging Party Laura Sands on December 10, 2004, to work at its Crawfordsville, Indiana facility.

On January 11, 2005,⁵ the Union sent Sands a membership application packet and notice advising her of her right to be and remain a nonmember of the Union and to object to paying any fees or dues not germane to the Union's representational duties. The notice stated, in part:

The right by law, to belong to the Union and to participate in its affairs is a very important right. Currently, you also have the right to refrain from becoming a member of the Union. If you choose this option, you may elect to satisfy requirements of a contractual union security provision by paying the equivalent of an initial-

firm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

² *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000); *Abrams v. Communications Workers of America*, 59 F.3d 1373 (D.C. Cir. 1995).

³ *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953).

⁴ The parties in this case waived a hearing and submitted a joint motion and stipulation of facts to the judge.

⁵ All dates hereafter are in 2005, unless otherwise noted.

tion fee and monthly dues to the Union. In addition, non-members who object to payment in full of the equivalent of dues and fees may file written objections to funding expenditures that are not germane to the Union's duties as your agent for collective bargaining. If you choose to be an objector, your financial obligation will be reduced very slightly. Individuals who choose to file such objections should advise the Union in writing at its business address of this choice. The Union will then advise you of the amounts which you must pay and how these amounts are calculated, as well as any procedures we have for challenging our computations.⁶

On January 25, the Union sent Sands another application packet and a letter setting forth the applicable initiation fees and dues. Sands joined the Union a few days later. On June 25, however, Sands resigned her membership and objected to paying fees for any purpose other than collective bargaining, contract administration, and grievance adjustment. In response, the Union promptly notified Sands that its auditors had calculated the amount of expenses attributable to the Union's representational duties to be 86.07 percent and that her monthly financial core fee would, therefore, be \$21.84. This amount represented a reduction of \$3.55 from her monthly union dues of \$25.39. The Union also provided Sands with portions of the auditor's report and the procedure for objecting to and challenging the Union's calculation of the nonmember fees. Sands did not challenge the calculations.

III.

A.

In *Communications Workers of America v. Beck* (*Beck*),⁷ the Supreme Court held that Section 8(a)(3) of the Act does not permit a collective-bargaining representative, over the objection of a dues paying nonmember employee, to expend funds collected from the objector under a union-security agreement on activities unrelated to collective bargaining, contract administration, or grievance adjustment. In *California Saw & Knife*

Works,⁸ the Board announced a comprehensive set of procedures designed to implement the *Beck* decision. The Board created a three stage process: the initial notice stage (stage 1), the objection stage (stage 2), and the challenge stage (stage 3).

At stage 1, before the union has collected any money from an employee under a union-security clause, the union is required to inform the employee that she has the right not to join the union and that employees who choose to remain nonmembers have the right (a) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (b) to be given sufficient information to enable the employee to decide intelligently whether to object; and (c) to be apprised of any internal union procedures for filing objections.⁹ That bundle of information is often referred to as the "initial notice" under *Beck*.¹⁰ If an employee decides not to join the union and also exercises her *Beck* right to object, *California Saw* mandates under stage 2 that the union apprise the "Beck objector" of the percentage of dues reduction she will receive, the union's basis for that determination, and the right of an objector to challenge those figures.¹¹ stage 3 concerns those objectors who, unlike Sands, challenge the union's determination of which of its expenses are chargeable (those related to representation) or the computations underlying that determination.¹²

The Seventh Circuit enforced *California Saw* in full, explaining that neither the *Beck* decision nor the National Labor Relations Act itself defines or resolves the design of procedures for assuring that workers learn of and are able to exercise their *Beck* rights.¹³ Regarding the Board's three-stage framework, the court stated:

All the details necessary to make the rule of *Beck* operational were left to the Board, subject to the very light review authorized by *Chevron*. It is hard to think of a task more suitable for an administrative agency that specializes in labor relations, and less suitable for a court of general jurisdiction, than crafting the rules for translating the generalities of the *Beck* decision (more precisely, of the statute as authoritatively construed in

⁶ As the Union's notice indicated, employees in bargaining units covered by the National Labor Relations Act may select one of three distinct relationships with a union: they may be members, nonmembers, or nonmember objectors. Unlike members, nonmembers typically do not have the right to participate in internal union matters, but they also are not subject to internal union discipline; for example, a union cannot fine nonmembers for engaging in strikebreaking activities. See *NLRB v. Granite State Joint Board, Textile Workers Local 1029*, 409 U.S. 213 (1972). Whether a nonmember takes the additional step of objecting to paying for the union's nonrepresentational expenses is a separate matter. Some employees may file such an objection; others may be content to exempt themselves from internal union affairs while still fully supporting the union financially.

⁷ 487 U.S. 735 (1988).

⁸ 320 NLRB 224 (1995), *enfd.*, sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), *cert. denied*, sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998).

⁹ *Id.* at 233.

¹⁰ E.g., *Teamsters Local 738 (E.J. Brach Corp.)*, 324 NLRB 1193, 1193-1194 (1997).

¹¹ *California Saw*, above, 320 NLRB at 233.

¹² *Id.* at 242-243; see also *Teamsters Local 579 (Chambers & Owen Inc.)*, 350 NLRB 1166, 1167 fn. 6 (2007) (describing the three stage *California Saw* procedure).

¹³ *Machinists v. NLRB*, 133 F.3d 1012, 1015 (7th Cir. 1998).

Beck) into a workable system for determining and collecting agency fees.¹⁴

Following its decision in *California Saw*, the Board has consistently applied the three-stage framework of notice-objection-challenge in considering cases dealing with *Beck* rights.

B.

Underlying the *California Saw* decision was the Board's determination that a union's performance of its obligations under *Beck* is to be judged under the duty of fair representation standard. The duty of fair representation derives from a union's status under Section 9(a) of the Act as the exclusive representative of all employees in a particular bargaining unit.¹⁵ As the exclusive representative, the union is required to fairly represent all employees in the bargaining unit. This obligation inevitably requires a bargaining representative to make discretionary choices in order to reconcile divergent interests among individual employees, classes of employees, and the union as a whole.¹⁶ Accordingly, under the fair representation standard, the union is lawfully entitled to choose among competing interests as long as its actions are not arbitrary, discriminatory or in bad faith.¹⁷ Because the *Beck* arena likewise requires unions to make those sometimes difficult judgments in balancing competing interests, and consistent with the Supreme Court's explicit directive that the duty of fair representation applies to all union activity,¹⁸ the Board in *California Saw* found "inescapable the conclusion that a union's obligations under *Beck* are to be measured" by the duty of fair representation standard.¹⁹ The Board has recently reaffirmed *California Saw* on this point,²⁰ and we take this opportunity to confirm our agreement that the duty of fair representation standard is the appropriate one.

IV.

We turn now to the heart of this case: the General Counsel's and Sands' contentions, which our dissenting colleagues embrace, that we should revise *California Saw*'s established three-stage framework to hold that every union, in its initial *Beck* notice to each employee it represents, must inform the employee of the specific details of the reduced fees and dues to be paid if she elected

to remain a nonmember and then chose to become a *Beck* objector.

We have carefully considered their supporting arguments. In particular, we have given due attention to Sands' argument, endorsed by our colleagues, that we are compelled to make this change by the Supreme Court's decision in *Chicago Teachers Union, Local 1 v. Hudson*, 475 U.S. 292 (1986), as interpreted by the United States Court of Appeals for the District of Columbia Circuit in *Abrams*²¹ and *Penrod*.²² For the reasons that follow, we are not persuaded by their arguments. Instead, balancing the competing interests at stake, we find that a union does not breach its duty of fair representation when it chooses not to calculate and include in its initial *Beck* notice detailed information about the specific amount of reduced fees and dues that would apply to *Beck* objectors. Accordingly, we affirm the judge's finding that the Union did not violate Section 8(b)(1)(A) of the Act.

A.

Contrary to Sands' and our dissenting colleagues' argument, *Hudson* does not require us to change our precedent.²³ They argue that the Board's *California Saw* process disregards *Hudson*'s statement that "[b]asic considerations of fairness . . . dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee."²⁴ Pointing to *Abrams* and *Penrod*, they argue that courts have concluded that this portion of *Hudson* requires unions to disclose specific reduced payment information in their initial *Beck* notices, and that we must reach the same conclusion. Careful examination of *Hudson*, however, reveals the flaws in this argument.

At the outset, we observe that *Hudson* was decided by the Supreme Court years before both *Beck* and *California*

²¹ 59 F.3d 1373.

²² 203 F.3d 41.

²³ The General Counsel expresses no view on this argument. Sands also argues that *California Saw*'s notice requirements disregard employees' Sec. 7 right to choose freely between union membership and nonmembership, on the theory that an employee cannot make an informed choice about membership without knowing the financial consequences of that decision. Nothing in *California Saw* can fairly be read to impede an employee's Sec. 7 right to become or remain a nonmember of a union. Indeed, *California Saw* mandates that initial *Beck* notices inform employees of that right by clearly describing that they have a choice between membership and nonmembership. Moreover, we find Sands' argument puzzling because that choice is financially neutral—there is no financial difference between being a union member and being a nonmember. Both pay the same amount to the union, either in the form of union dues or dues equivalents. It is only when nonmembers take the additional step of becoming *Beck* objectors that less than the full dues equivalent may be paid. We accordingly find no merit in this argument, and we shall not address it further.

²⁴ *Hudson*, above, 475 U.S. at 306.

¹⁴ *Id.*

¹⁵ See *Ford Motor Co. v. Huffman*, above, 345 U.S. at 337.

¹⁶ See *Humphrey v. Moore*, 375 U.S. 335, 349 (1964).

¹⁷ See *California Saw*, above, 320 NLRB at 228–230.

¹⁸ See *Air Line Pilots v. O'Neill*, 499 U.S. 65, 67 (1991).

¹⁹ *California Saw*, above, 320 NLRB at 230.

²⁰ See *Machinists Local 2777 (L-3 Communications)*, 355 NLRB 1062, 1064 (2010).

Saw, making it highly unlikely that the Court had in mind the question presented in this case. Certainly, this question was not before the Court. *Hudson* involved a public sector union whose relationship with unit employees was governed by state law. In *Hudson*, unlike here, there were only *two* relationships—not three—that an employee could have with the union: member or nonmember.²⁵ As to nonmembers, applicable state law provided that all nonmembers would be required to “pay their proportionate share of the cost of the collective bargaining process and contract administration.”²⁶ Although *Beck* had not yet been decided, the effect of that statutory provision was to make all nonmembers the equivalent of nonmember *Beck* objectors, entitling them to pay reduced fees and dues and to challenge the union’s calculations of those payments. That point—that *Hudson* involved nonmembers who were *already* objecting to the amount of payments they were making to the union—is essential to understanding the dispute in *Hudson* and why the Court’s disposition of it does not control the present case.

Hudson arose because the union calculated and collected proportionate share payments from nonmembers without any prior explanation of how those reduced payments had been calculated. In addition, although the union had implemented a procedure for considering nonmembers’ challenges to the proportionate share payment, that procedure was controlled largely by the union. It required employees to make prescribed payments to the union before any challenge would be permitted. And, even if a nonmember challenger prevailed in challenging the amount of the payment, the only remedy was an immediate reduction in the proportionate share payment for all nonmembers and a rebate for the challenger. Employees had to pay up front, with the possibility of later being reimbursed following a successful challenge.

The Court found “three fundamental flaws” in the union’s procedure.²⁷ First, the Court condemned the rebate remedy for successful challengers. The Court found that even the temporary use by the union of dissenters’ funds for nonrepresentational purposes impermissibly impinged upon the dissenters’ First Amendment rights.²⁸ Second, the Court found unlawful the union’s failure to explain to nonmembers making reduced payments the basis for the amount of the reduction in advance of col-

lecting those payments.²⁹ On this point, the Court reasoned that “[b]asic considerations of fairness, as well as concern for the First Amendment rights at stake” required the nonmembers to “be given sufficient information to gauge the propriety of the union’s fee.”³⁰ The Court went on to say that leaving the employees “in the dark about the source of the figure for the agency fee – and requiring them to object [assert a “challenge” in *California Saw* terms] in order to receive the information – did not adequately protect the careful distinctions drawn in [*Abood v. Detroit Board of Education*, 431 U.S. 209 (1977)].”³¹ Finally, the Court concluded that the union’s challenge procedure was improper because it failed to provide nonmembers with a reasonably prompt decision by an impartial decision maker.³²

As the foregoing explanation demonstrates, and as the Board has previously observed,³³ *Hudson* did not address the question presented here: whether, under a different, multistep dues system, a union must calculate and specify in its initial notice to employees the specific amount of reduced fees and dues that would apply if the employee chose to become a nonmember and then elected to become an objector. Rather, *Hudson* concerned a union’s dealings with employees who *already* had the status of objectors and from whom the union *already* was collecting reduced fees. Those circumstances, in particular, were the predicate for the Court’s statement that “[b]asic considerations of fairness, as well as concern for the First Amendment rights at stake” required the nonmembers to “be given sufficient information to gauge the propriety of the union’s fee.” As the Court explained, the employees bore the initial burden of objecting to paying for the union’s nonrepresentational expenses, but once they had done so, the burden was on the union to explain the basis for its proportionate share payment.³⁴ That reasoning does not apply to the present case, which concerns only employees who have not yet chosen to become nonmembers, who are not yet paying any dues, and who have never voiced any objection to paying full dues.

²⁹ *Id.* at 306.

³⁰ *Id.*

³¹ *Id.* In *Abood*, the Court held that, although a public union may expend funds on political or other ideological causes not germane to its representational duties, it could not, constitutionally, finance those efforts with the funds of objecting employees. 431 U.S. at 235–236.

³² *Hudson*, above, 475 U.S. at 307. The Court also rejected the union’s belated attempt to save its procedure by escrowing 100 percent of the fees collected from the dissenters pending resolution of their challenges. *Id.* at 309.

³³ See *Teamsters Local 166 (Dyncorp Support Services)*, 327 NLRB 950, 952 fn. 10 (1999) (“*Dyncorp*”), rev. granted *Penrod v. NLRB*, above, 203 F.3d 41.

³⁴ *Hudson*, above, 475 U.S. at 306.

²⁵ As noted, in bargaining units covered by the Act an employee may choose from among three relationships with a union: member, nonmember, or nonmember objector.

²⁶ *Hudson*, above, 475 U.S. at 295 fn. 1.

²⁷ *Id.* at 304–305.

²⁸ *Id.* at 305.

In arguing to the contrary, Sands and the dissent point to the District of Columbia Circuit's opinion in *Penrod*, above. There, as stated, the court denied enforcement of a case in which the Board considered and rejected a request, identical to the one here, to require unions to provide reduced payment information in their initial *Beck* notices. In adopting that requirement, the *Penrod* court relied exclusively on its previous decision in *Abrams*. In *Abrams*, the court took the position that, although *Hudson* arose in the public sector union context, it "applies equally" to a union's statutory duty of fair representation inasmuch as it is "rooted in [b]asic considerations of fairness, as well as concern for the First Amendment rights at stake."³⁵ In addition, the *Abrams* court found that, although *Hudson* did not concern initial notices to employees, the same "basic considerations of fairness" necessarily extended to a union's notice to workers of their right to object to paying for nonrepresentational expenses.³⁶ The *Penrod* court thus concluded that *Hudson*, as interpreted in *Abrams*, required unions to give potential *Beck* objectors the same information provided to actual *Beck* objectors.³⁷

The Board subsequently adopted the *Penrod* court's decision as the law of the case, but it has not since applied *Penrod* to find that a union violates its duty of fair representation by failing to provide specific reduced payment information in its initial *Beck* notices. With due respect to the District of Columbia Circuit, we decline to do so here. For the reasons discussed, we remain convinced that *Hudson* does not resolve the question presented in this case. Moreover, we respectfully disagree with the court that the "fairness" rationale of *Hudson* warrants requiring all unions to treat every employee at stage 1 of the *Beck* process the same as those employees who have become nonmembers and who, at stage 2 of that process, actually have objected to paying for the union's nonrepresentational expenses. As *Hudson* makes clear, the key difference between those classes of employees is that the nonmember objectors, by the very act of objecting, have triggered the union's obligation to inform them not only of any proportionate share payments but also of the basis for those payments.³⁸

³⁵ 59 F.3d at 1379 fn. 7, citing *Hudson*, above, at 306.

³⁶ *Id.* at 1379 fn. 6.

³⁷ *Penrod*, above, 203 F.3d at 48.

³⁸ Moreover, any broader reading of *Hudson* would ignore the fact that cases involving public sector unions are grounded in constitutional considerations, whereas cases involving private sector unions are rooted in the duty of fair representation. See *United Steelworkers of America v. Sadlowski*, 457 U.S. 102, 108, 111, 121 fn.16 (1982) (pointing out that conduct by private sector unions does not involve state action and cautioning against uncritical application of First Amendment principles to their internal rules); *Machinists v. NLRB*, above, 133 F.3d at

This is not to suggest that the "fairness" rationale of *Hudson* is irrelevant to our consideration of a union's obligations with respect to its initial *Beck* notice. To the contrary, as Sands and our colleagues point out, the Board actually relied on *Hudson*'s "fairness" concept in *California Saw*. There, the Board agreed that *Hudson* was instructive insofar as "fairness" required unions, under the duty of fair representation, to inform all employees in the stage 1 notice of their basic rights under *Beck*.³⁹ The Board also looked to *Hudson* in *Chambers & Owen*,⁴⁰ where the Board agreed with the *Penrod* court's additional finding that *Hudson* requires unions to provide *Beck* objectors with information regarding the per capita taxes paid to affiliates at the second, rather than the third, stage of the *California Saw* process. Without passing on whether *Chambers & Owen* was correctly decided, we again observe that, like *Hudson*, *Chambers & Owen* concerned employees who already had become nonmembers and objected to paying for the union's nonrepresentational expenses. In those circumstances, it is clear why the *Chambers & Owen* majority so readily relied on *Hudson*. But the circumstances are different here, where we are concerned only with whether a union is required to give specific reduced payment information to employees who are being fully informed of their right to choose membership, nonmembership, or *Beck* objector status, but have not yet made known their choice.

For all of those reasons, we are not persuaded that *Hudson*, either on its own terms or as interpreted by the District of Columbia Circuit, compels us to revise the *California Saw* framework to require unions to include specific reduced fee and dues information in their initial *Beck* notices.

B.

Instead, the task before us is to determine whether, on balance, the Union breached its duty of fair representation by not providing that information in its initial *Beck*

1017 ("*Hudson* was a constitutional case; it involved the First Amendment rights of public employees, not the statutory rights of workers covered by the National Labor Relations Act."). With due respect to the District of Columbia Circuit, we believe *Abrams* and *Penrod* do not give this distinction sufficient weight.

For similar reasons, the dissent's reliance on *Harris v. Quinn*, 134 S. Ct. 2618 (2014), and *Knox v. SEIU Local 1000*, 132 S. Ct. 2277 (2012), is misplaced. Both of those cases arose in the public sector and were decided under First Amendment principles. Moreover, in neither case did the Court address the requisite content of a union's initial notice to employees of their membership options and their obligation to pay regular dues and fees.

³⁹ *California Saw*, above, 320 NLRB at 233 & 233 fn. 50.

⁴⁰ *Teamsters Local 579 (Chambers & Owen Inc.)*, above, 350 NLRB 1166.

notice to Sands.⁴¹ As stated, a union breaches its duty of fair representation only if its actions are arbitrary, discriminatory, or undertaken in bad faith.⁴² The record in this case contains no evidence of discrimination or bad faith by the Union. Accordingly, the sole question presented is whether the Union's actions were arbitrary, i.e., "if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness' as to be irrational."⁴³ "This 'wide range of reasonableness' gives the union room to make discretionary decisions and choices" in order to reconcile the competing individual and collective interests implicated.⁴⁴ A union's discretion is not boundless, however.⁴⁵ Drawing the necessary lines requires us, as the *California Saw* Board put it, "to bring the values of reasonableness and practicality into our own considerations of the facts of each case," and we shall do so here.⁴⁶

At the outset, we acknowledge, as indicated, that the Board has previously engaged in this balancing in *Dyncorp*.⁴⁷ There, as here, the General Counsel sought to require that the initial *Beck* notice include the percentage of union funds that was spent on nonrepresentational activities. In rejecting the General Counsel's request, the Board reasoned that stage 1 notice requirements were designed in part to avoid unnecessarily burdening unions with the time consuming and costly task of calculating the reduced fees and dues that would apply to a non-member objector. As the Board explained:

The Board in *California Saw* held that a union is required to inform only objectors, not nonmembers in general, of the percentage by which dues and fees are reduced for objectors. That is because, to calculate the percentage reduction in dues and fees for objectors, a union must break down all of its expenditures into chargeable and nonchargeable categories and have its expenditure information independently verified.⁴⁸

⁴¹ Because we disagree with our dissenting colleagues' view that this case is controlled by *Hudson* and *Chambers & Owen*, we disagree with their contention that it is inappropriate to balance the competing interests because, in their words, "the relevant balance has already been struck."

⁴² See *Marquez v. Screen Actors Guild*, 525 U.S. 33, 44 (1998).

⁴³ *O'Neill*, above, 499 U.S. at 67, quoting *Huffman*, above, 345 U.S. at 338.

⁴⁴ *Marquez*, above, 525 U.S. at 45.

⁴⁵ See, e.g., *Machinists Local 2777*, above, 355 NLRB 1062 (holding that a union arbitrarily required *Beck* objectors to annually renew their objections).

⁴⁶ *California Saw*, above, 320 NLRB at 230.

⁴⁷ 327 NLRB 950.

⁴⁸ *Id.* at 952 (footnotes omitted).

The Board concluded that this "expensive and time-consuming undertaking" is not required of a union simply because "some employees may object in the future."⁴⁹ Rather, the full-fledged undertaking of calculating chargeable and nonchargeable expenses, and its attendant verification and subsequent challenge procedures, is required of unions that are in fact attempting to collect fees and dues from *Beck* objectors.⁵⁰ The Board reasoned that, where there are no objectors in the unit, for example, the duty of fair representation does not require a union to go to the expense of preparing this information in case some employee might object in the future. Although acknowledging that some unions might choose to provide the information in their initial *Beck* notices, the Board made clear that "the decision whether or not to do so [is] a judgment call" falling within the wide range of reasonableness accorded union conduct under the arbitrary prong of the duty of fair representation.⁵¹ Thus, the Board in *Dyncorp* declined to change the *California Saw* framework to require that all unions calculate and provide reduced fee and dues figures in their initial *Beck* notices to all bargaining unit employees.

As discussed, the District of Columbia Circuit rejected the Board's view in *Dyncorp*.⁵² But the court expressly did not consider the Board's interests-based rationale. Instead, the court simply applied the holding of *Abrams* that *Hudson* requires unions' initial *Beck* notices to specify the reduced fees and dues applicable to nonmember objectors. We recognize that a three-member panel of that court will, if this case comes before it, be constrained to apply *Abrams* and *Penrod* as they stand. Nevertheless, because of the importance of this issue, we have independently considered the balance struck by the Board in *Dyncorp*. As we now explain, we find that under the duty of fair representation standard unions permissibly may choose not to provide the specific detailed information involved here at the time of the initial *Beck* notice.

1.

We first examine the purpose of a union's initial *Beck* notice and whether a new employee, in order to determine whether to choose objector status, needs to know beforehand the specific amount by which her fees and dues would be reduced. As described, the stage 1 notice established in *California Saw* informs employees of their basic rights to choose membership or nonmembership and, if the latter, to object to paying full dues, and the

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Penrod*, above, 203 F.3d 41.

procedures for filing an objection. It thus makes clear the employee's options in light of the fundamental nature of a *Beck* objection. The right to file a *Beck* objection arises from the Supreme Court's determination that "Congress [in enacting Section 8(a)(3)] did not intend 'to provide the unions with a means for forcing employees, over their objection, to support political causes which they oppose.'" ⁵³ Thus, *Beck* and the objection it established are grounded in the notion that an employee deciding whether to object is deciding whether her political beliefs are compromised by paying full fees and dues to the union, which absent an objection may expend those funds on causes with which the employee disagrees. In other words, as the Court recognized, we can reasonably expect that a *Beck* objection will usually turn on ideological concerns, the precise reduction in fees and dues often being less important. ⁵⁴

We do not assume, however, that financial considerations play no role in an employee's decision whether to object. To the contrary, we recognize that some employees considering requesting nonmember objector status may be motivated by the prospect of paying reduced fees and dues, and would prefer to know the precise reductions beforehand. ⁵⁵ But the duty of fair representation does not require a union to perfectly anticipate every interest of every employee. ⁵⁶ For example, courts have held that unions may require *Beck* objections to be filed during certain months of the year, so-called "window periods," in the interest of timely resolving obligations and disputes, notwithstanding that employees naturally might prefer to file objections whenever they wish. ⁵⁷ Board and judicial acceptance of such compromises is essential to ensuring that unions have the "wide latitude" they need to effectively perform their representational duties. ⁵⁸ So here, the duty of fair representation is not automatically breached merely because some potential *Beck* objectors might prefer advanced disclosure of specific payment reduction information as opposed to the general information provided in this case. ⁵⁹

⁵³ *Beck*, above, 487 U.S. at 751, quoting *Machinists v. Street*, above, 367 U.S. at 764.

⁵⁴ See *Hudson*, above, 475 U.S. at 305.

⁵⁵ See *Machinists Local 2777*, above, 355 NLRB at 1065, 1075–1076 (Member Pearce, dissenting in part).

⁵⁶ See *Humphrey v. Moore*, above, 375 U.S. at 349 ("The complete satisfaction of all who are represented is hardly to be expected.")

⁵⁷ See, e.g., *Abrams*, above, 59 F.3d at 1381–1382.

⁵⁸ *Air Line Pilots Assn. v. O'Neill*, above, 499 U.S. at 78.

⁵⁹ The dissent suggests that we should adopt the across-the-board rule proposed by the General Counsel and the Charging Party in order to align our law with other Federal statutory and regulatory schemes requiring a variety of prechoice notices to consumers and others. But, as discussed, Board law already requires a prechoice notice to employees: Before the union has collected any money from an employee

We find it significant, moreover, that the *California Saw* framework imposes no economic consequences on potential *Beck* objectors. A timely *Beck* objection is effective when filed, and the employee is entitled to a reduction in his fees and dues from that date forward. ⁶⁰ Thus, deferred disclosure of the reduced figures themselves creates no risk that potential *Beck* objectors will end up paying for nonrepresentational expenses any longer than they desire. ⁶¹ All the employee needs to do is make her objection known and she will secure the full benefit of whatever reduction is applicable. ⁶²

For those reasons, we find that *California Saw*'s stage 1 notice, as currently constituted, reasonably fulfills the interest of potential objectors in being notified of their rights and in easily registering an objection without any undue burdens. The present case is illustrative. The Union's stage 1 notice fully informed Sands that she had the right to be a member or a nonmember, that nonmembers could object to funding the Union's nonrepresentational activities, and that by filing an objection she could obtain a reduction in fees and dues for such activities. This notice provided Sands a clear opportunity to assert her rights, which she eventually did. We observe, as did the judge, that Sands never complained that a lack of information delayed or otherwise hindered her objection. Nor is there any evidence that she ever asked the Union to provide the reduced payment information before she made her decision. ⁶³ Finally, once Sands did object, the

under a union-security clause, the union must inform the employee (a) that she has the right not to join the union and (b) that employees who choose to remain nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to decide intelligently whether to object; and (3) to be apprised of any internal union procedures for filing objections. The dissent regards that initial notice as inadequate, but its solution fails to give proper weight to competing legitimate interests under the duty of fair representation. We believe that there are compelling reasons to find that existing law strikes the appropriate balance.

⁶⁰ See, e.g., *Machinists Lodge 160 (American National Can Co.)*, 329 NLRB 389, 391 (1999) (finding that the respondent union violated its duty of fair representation by delaying the effective date of employee's timely filed *Beck* objections).

⁶¹ Compare *Machinists Local 2777*, above, 355 NLRB at 1064–1065 (union's requirement that *Beck* objectors renew their objections annually was unlawful in part because the requirement created a risk that employees who did not remember to renew would lose the opportunity to object for the following 11 months).

⁶² Not requiring disclosure of the reduced payment figures in the initial *Beck* notice is consistent with the Supreme Court's instruction in *Machinists v. Street*, above, 367 U.S. at 774, that dissent "is not to be presumed—it must affirmatively be made known to the union by the dissenting employee." See also *Abood v. Detroit Board of Education*, above, 431 U.S. at 238.

⁶³ By way of highlighting, again, the contrast with *Hudson*, above, 475 U.S. 292, when the Supreme Court required the union there to

Union timely reduced her fees and dues and provided her with all the information she needed to challenge those reduced payments.

On the other side of the balance, we find that unions could be subjected to considerable burdens were we to require that they calculate and provide in their stage 1 notice the specific reduction in fees and dues that would apply to nonmember objectors. Initially, we observe, contrary to the dissent's suggestion, that the Union's ability in this case to timely provide to Sands specific dues information as required under *California Saw* does not establish that all unions have or even can develop such capability. Unions that currently have no *Beck* objectors may not have expended the resources to track and calculate their chargeable and nonchargeable expenses, yet under the General Counsel's and Charging Party's proposal those unions would be forced to immediately undertake those efforts without knowing whether they would ever have a nonmember objector, let alone how many. If no employee objects, the union will have expended significant sums to perform unnecessary record-keeping and an unnecessary audited accounting.⁶⁴ These burdens are significant and subject to annual revision. See, e.g., *Abrams*, above, 59 F.3d at 1381 (upholding union *Beck* system where 1 week of every 13 weeks union employees recorded their activities according to 1 of 24 categories; an outside firm retained by the union determined from the time sheets how much time was spent on chargeable and nonchargeable expenses; the outside firm also randomly telephoned union employees to verify the information provided; and independent certified pub-

inform existing employees what their proportionate share would be and the basis for it, it was a calculation that was germane to all nonmembers receiving the notice because they already were entitled to pay reduced fees and dues and to challenge the union's calculations by virtue of their statutorily imposed status as objectors. Here, the reduced payment calculation is not essential at stage 1 of the notice process because employees are only making the initial decision whether to be a member, nonmember, or nonmember objector.

⁶⁴ In arguing that these tasks are not so burdensome, Sands and the dissent point to *Chambers & Owen*, above, 350 NLRB 1166. That case is inapposite. As noted, *Chambers & Owen* concerned whether unions—that had already received *Beck* objections—should be required to provide certain affiliate expenditure information to objectors at the second stage, rather than the third stage, of the *California Saw* process. In answering that question affirmatively, the Board observed that unions are well aware of their obligations to account to *Beck* objectors for the way their dues are spent, and found that any administrative burdens faced by unions in providing the affiliate information would not be particularly onerous because of advancements in computer and internet technology that have facilitated unions' *Beck*-related disclosure requirements. *Id.* at 1169–1170. Although it may not be particularly onerous to require a union that is *already* obligated to compile certain information to provide it a step earlier in the *California Saw* process, here we are potentially dealing with unions that have not yet compiled any information at all.

lic accountants annually audited the allocations). Many smaller local or regional independent unions, moreover, may not even have the resources to develop those record-keeping and accounting systems, or to implement them by administering a full-fledged *Beck* system.⁶⁵ Nor are we convinced that recent computerized record-keeping and technological developments eliminate these burdens. The cost of such technological capabilities may well be beyond the means of smaller unions, which are disproportionately burdened, especially given their limited resources to devote to their representational obligations.⁶⁶ Other unions reasonably may choose not to invest in such systems until they are actually faced with an objection or objections, not due to complacency but to other appropriate priorities. We would be hard pressed, for example, to label “irrational” a union's decision to devote its resources to collective bargaining and contract administration until a sufficient number of objections arise that investing in a *Beck* system becomes cost-effective.

Further, even when a union does receive an objection, it lawfully may accommodate that objection by means that are less costly than the kind of preobjection audited accounting of its expenses that the General Counsel and Sands urge. For example, a union that is affiliated with an international union might forgo that audit and adopt what is called the “local presumption” to calculate its nonmember objector fees and dues.⁶⁷ Still other unions

⁶⁵ For Fiscal year 2013, the Department of Labor, Office of Labor Management Standards, lists approximately 808 active, unaffiliated unions of which approximately 574 have 200 members or fewer and total receipts of \$200,000 or less. Of those 574 unions, approximately 452 have 100 members or fewer and total receipts of \$100,000 or less. See <http://www.dol.gov/olms/regs/compliance/rrlo/lmrda.htm>, last visited August 21, 2014. The dissent asserts that “regulatory disclosure requirements” imposed by the Department of Labor, namely LM-2 reporting, “already require unions to report their expenditures on representational activities” (Footnote omitted.) But sharing the concern motivating our decision today, the Department of Labor has exempted from LM-2 reporting any labor organization with annual receipts of less than \$250,000. See 68 Fed.Reg. 5837401, 58383 (October 9, 2003); *AFL-CIO v. Chao*, 409 F.3d 377, 380 (D.C. Cir. 2005).

⁶⁶ Nor do we agree with the dissent that the burdens on a small union should be proportionally lighter, because the funds to be analyzed are smaller. The same multistep process of developing and updating a system that tracks and calculates chargeable and nonchargeable expenses would still be required.

⁶⁷ Under settled Board law, a local union—as an alternative to determining its nonmember objector fee by conducting an audit of its own chargeable and nonchargeable expenditures—may use the “local presumption” to calculate this fee. The “local presumption” allows a local union to use the same allocation of chargeable and nonchargeable expenses as that of its parent affiliate. The Board permits this alternative because the Board has found that parent organizations almost always have more nonchargeable expenses than their locals, which means the *Beck* objector will actually pay a smaller amount when the “local presumption” is used. See *Thomas v. NLRB*, 213 F.3d 651, 661 (D.C. Cir.

reasonably may choose to waive their right to collect any money from objectors rather than expend time and money calculating and administering the reductions.⁶⁸ These judgments fit comfortably within the “wide range of reasonableness” afforded unions under the duty of fair representation.⁶⁹ In those circumstances, imposing the threshold burden on unions to conduct an audit of their local expenses would serve no meaningful purpose.⁷⁰

Considering all of the above, we have found, on the one hand, that the potential benefits to employees of requiring unions to include detailed reduced payment information in their initial *Beck* notices appear to be marginal, at best. The Board’s established initial notice requirements already meet employees’ fundamental need for information about their right to object, without imposing any significant burdens on their decisions whether to do so. On the other hand, imposing that requirement risks saddling unions with administrative and financial burdens that many unions might find impossible or impractical to meet. To be sure, not every union will be adversely affected to the same degree, and some unions may be better equipped than others to meet those burdens. But those variances only highlight that the rigid rule sought in this proceeding is at odds with basic fair representation principles affording unions a “wide range of reasonableness” in reconciling the interests of individ-

2000). When a local union uses the local presumption, it will receive less dues money from those paying the nonmember objector fee, but it will also be able to avoid the Board’s requirement of a local audit. *Auto Workers Local 95 (Various Employers)*, 328 NLRB 1215, 1217 (1999), petition for review denied in relevant part, *Thomas v. NLRB*, 213 F.3d 651 (D.C. Cir. 2000). The parent organization, however, still has to provide “verified supporting expenditure information” justifying its chargeable and nonchargeable expenses. *Television Artists AFTRA (KGW Radio)*, 327 NLRB 474, 477 fn. 15 (1999).

⁶⁸ See *Laborers Local 265*, 322 NLRB 294, 296 (1996) (union’s waiver of payment of any dues or fees moots a challenge to the union’s calculations and makes unnecessary the provision of financial information).

⁶⁹ See *Barrentine v. Arkansas-Best Freight System*, 450 U.S. 728, 742 (1981) (a union balancing individual and collective interests may validly determine that “an alternative expenditure of resources would result in increased benefits for workers in the bargaining unit as a whole.”).

⁷⁰ We also observe that the proposed revision of *California Saw* could impose significant burdens even on unions, such as the one in this case, that already have established *Beck* systems. Here, for example, as described by the judge, the Union stated that providing employees it represents with an initial *Beck* notice that includes specific reduced fee and dues information for objectors is complicated because, in Kroger bargaining units alone, the Union maintains 36 separate dues rates covering thousands of employees in 5 different bargaining units. In order to provide a meaningful and accurate amount of dues deduction, the revised stage 1 notice sought in this proceeding thus would require an individualized calculation for each employee receiving an initial *Beck* notice, adding a level of complexity and imposing significant additional burdens.

ual employees and those of the organization as a whole. In the end, we simply are not persuaded that the General Counsel’s and Sands’ proposed revision to the *California Saw* framework is necessary or justified. Rather, we conclude that *California Saw* continues to strike a reasonable balance between the competing interests involved, and we reaffirm it today.

V.

We therefore affirm the judge’s finding that the Union did not violate Section 8(b)(1)(A) of the Act by failing to provide the Charging Party with the reduced fees and dues applicable to nonmember objectors when it first advised her of her obligations under the union-security clause.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. September 10, 2014

Mark Gaston Pearce,	Chairman
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Kent Y. Hirozawa,	Member
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Nancy Schiffer,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBERS MISCIMARRA AND JOHNSON, concurring in part and dissenting in part.

Employees subject to union-security arrangements must pay their share of representational expenses—i.e., for collective bargaining, contract administration, and grievance handling. However, among the rights guaranteed employees under Section 7 of the Act is the right to refrain from union activity. The “refrain from” right entitles employees to choose not to subsidize a union’s nonrepresentational expenditures, such as political contributions.¹ Unions have the corresponding statutory duty to offer information sufficient to enable employees to make an informed choice.

That much is simple. It is more complex to decide what information a union must furnish employees, and when. Unlike our colleagues, we believe the Act re-

¹ *Communication Workers v. Beck*, 487 U.S. 735 (1988). Employees who choose to so refuse are called “*Beck* objectors.”

quires that a union provide more information earlier in order for employees to make that informed choice.

A brief review of the relevant legal framework is helpful here. Employees subject to a union-security clause must choose among three types of union participation: union membership, with full union dues; nonmember status, with “agency fees” generally equivalent to full union dues; or nonmember *Beck* objector status, with a requirement to pay only the percentage of agency fees expended by the union for representational purposes.

The decision to become a *Beck* objector is no trivial matter. As stated, it involves the exercise of the statutory right to refrain from union activities—specifically, to refrain from subsidizing union activities that further policies or political views with which an employee may disagree. Only nonmembers may exercise the *Beck* objector right, so an employee must also assess whether doing so is worth forfeiting the benefits of union membership and the right to participate in internal union affairs.

In *California Saw*,² the Board for the first time set forth its view of the information a union must provide to potential and actual *Beck* objectors at each of three stages. At stage 1, a union must inform new employees of their right to become nonmembers and their *Beck* right to object to subsidizing nonrepresentational expenditures. At stage 2, a union must inform the *Beck* objector of the percentage reduction in union fees, the basis for the calculation, and the right to challenge the calculations. At stage 3, once an objector challenges the union’s calculations, the union must supply further information supporting those calculations.

In this case, the General Counsel and Charging Party request the Board to hold that unions must disclose the percentage fee reduction to new employees and nonmembers at stage 1—when providing initial notice of their *Beck* rights and *before* employees must decide whether to object—rather than at the postobjection stage 2. In this regard, the General Counsel and Charging Party request that we overrule *Teamsters Local 166 (Dyncorp Support Services)*,³ where the Board followed *California Saw* and held that a union does *not* have a duty to provide information about the percentage reduction in union fees for a *Beck* objector until after an employee exercises the objection right.

Prior Board and court decisions provide guidance here. First, the Supreme Court instructs that “basic considerations of fairness” dictate that employees “be given suffi-

cient information to gauge the propriety of the union’s fee.” *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 306 (1986). Second, in deciding what information unions must provide to employees, it is not appropriate to engage in a balancing of interests analysis. Although the adequacy of union disclosures is evaluated under the duty of fair representation standard, and although that standard generally accords unions a wide range of reasonableness, “that range does not extend to conduct that contravenes *Hudson*” and denies employees “information essential to the exercise of their *Beck* and statutory rights.” *Teamsters Local 579 (Chambers & Owen Inc.)*, 350 NLRB 1166, 1169 (2007). Third, the United States Court of Appeals for the District of Columbia Circuit has decided the precise issue presented here. Applying *Hudson*, the court held that “basic considerations of fairness” require disclosure of the percentage reduction before employees are required to make the decision to become *Beck* objectors. *Penrod v. NLRB*, 203 F.3d 41, 47 (D.C. Cir. 2000).

Our colleagues cling to the rationale of *Dyncorp*. They distinguish *Hudson* and find it does not “compel[]” a revision of *California Saw*; they balance the putative respective interests of unions and employees in defining what is arbitrary conduct within a wide range of reasonableness under the duty of fair representation; and they decline to follow the D.C. Circuit’s reasoning in *Penrod*. On the other hand, we believe *Hudson*, *Chambers & Owen*, and *Penrod* warrant a conclusion that the union must provide the dues reduction percentage information to new employees and nonmembers before they must decide whether to become *Beck* objectors. We therefore respectfully dissent from our colleagues’ refusal to modify the *California Saw* framework as the General Counsel and Charging Party request.

The Board in *California Saw* accepted *Hudson*’s “basic considerations of fairness” standard as applicable in our *Beck* jurisprudence: “[W]e agree with the Court of Appeals for the District of Columbia that the same ‘basic considerations of fairness’ necessarily extend to a union’s notice to nonmembers of their right to object to payment of nonrepresentational expenses.” 320 NLRB at 233 fn. 50 (citing *Abrams v. Communications Workers*, 59 F.3d 1373, 1379 fn. 6 (D.C. Cir. 1995)). In *Chambers & Owen*, the Board reiterated its view that the “animating principles of *Hudson*” are applicable to a determination of whether a union acts in arbitrary breach of its duty of fair representation under the Act.⁴ Although the majority claims that the Board’s agreement with the D.C. Circuit applies only to the notice of rights

² *California Saw & Knife Works*, 320 NLRB 224 (1995), enf’d, sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998).

³ 327 NLRB 950 (1999), rev. granted *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000).

⁴ 350 NLRB at 1166–1167.

at stage 1, the D.C. Circuit subsequently concluded that “since *Abrams* applies *Hudson* to new employees . . . , they too must be told the percentage of union dues that would be chargeable were they to become *Beck* objectors.” *Penrod*, supra. Indeed, it stands to reason that the notice of rights at stage 1 is insufficient by itself without information directly relevant to the exercise of those rights.⁵

Despite these Board and court pronouncements, the majority declines to apply *Hudson*, finding its application not “compelled” because *Hudson* involved employees who were already paying reduced fees. The Board relied on this very reasoning in *Dyncorp*,⁶ and the D.C. Circuit in *Penrod* rejected it as foreclosed by its decision in *Abrams*. In *Abrams*, the D.C. Circuit took the Supreme Court at its word, saying that the Court in *Hudson* “held that ‘[b]asic considerations of fairness . . . dictate that the potential objectors be given sufficient information to gauge the propriety of the union’s fee.’”⁷ The *Abrams* court acknowledged that *Hudson* presented the issue in a different factual setting, but it found that difference did not permit it to avoid *Hudson*’s holding “that potential objectors must be given adequate notice”⁸—a holding the D.C. Circuit in *Penrod* found dispositive of the precise issue presented here.⁹ And even setting aside the D.C. Circuit’s holdings, we believe our colleagues’ approach—asking whether *Hudson* “compels” the fee-reduction disclosure at stage 1—fails to accord sufficient deference to *Hudson*’s animating principles. Those principles apply to all employees, including new hires deciding whether to exercise their right to object.

In further reliance on *Dyncorp*’s rationale, our colleagues argue that the Union’s failure to provide the Charging Party with the percentage reduction before she decided whether to object was not irrational. In their view, this makes it lawful under the “arbitrary” prong of the duty of fair representation standard. They engage in a balancing test, weighing the perceived burden on unions to produce the percentage reduction at stage 1

against the benefit to employees of knowing the percentage before deciding whether to subsidize nonrepresentational expenditures. The problem with this analysis is that the relevant balance has already been struck in *Chambers & Owen* in favor of requiring disclosure. The specific issue decided there was whether a union must furnish objectors an adequate explanation of the basis for the fee charged to objectors at the time they object (stage 2), and that objectors should not be required to challenge the union’s calculations (stage 3) before receiving the relevant information. The Board found that the information must be provided at stage 2 to allow an objector to make an informed decision about whether to challenge the union’s fee. Indeed, the Board held that withholding information that “actually impedes a nonmember employee from exercising his *Beck* rights and interferes with the statutory right under Section 7 to refrain from assisting a union is unreasonable and arbitrary.”¹⁰

Importantly for the present case, the Board’s analysis in *Chambers & Owen* transcends the specific issue addressed there. As previously stated, the Board reaffirmed its finding in *California Saw* that the Supreme Court’s reasoning in *Hudson*, supra, was dispositive of unions’ disclosure duties under *Beck*. Rejecting the dissenting view that post-election disclosure of information was adequate, the Board stated that

[t]he reason for requiring adequate disclosure to *Beck* objectors is so that they can decide whether to challenge the union’s fee calculations. As the Supreme Court observed, and contrary to the dissent, that purpose would be thwarted by keeping objectors in the dark and requiring them to challenge the union’s figures. Although, as the dissent notes, unions generally enjoy a wide range of reasonableness under the duty of fair representation standard, that range does not extend to conduct that contravenes *Hudson* and denies to nonmember objectors information essential to the exercise of their *Beck* and statutory rights. Nor can we agree, in light of the plain language of *Hudson*, that it is appropriate to engage in the balancing analysis advocated by the dissent.¹¹

The same analysis applies here: basic considerations of fairness require a union to provide new employees and nonmembers with the percentage by which their union fees would be reduced before they decide whether or not to object under *Beck*. Only then can the employee make a fully informed decision. Applying the animating principles of *Hudson*, as defined and applied in *Chambers & Owen*, to

⁵ Of course, an employee’s choice whether to exercise the statutory objector right may be based on practical economics rather than any philosophical opposition to a union’s nonrepresentational activities. The Respondent describes the percentage of nonrepresentational expenses in this case—13.93 percent—as “slight,” but employees may well disagree with that characterization. But even if 13.93 percent is not enough to affect an employee’s decision, the percentage in some cases is more than enough to affect it. See, e.g., *Knox v. Service Employees International Union, Local 1000*, 132 S. Ct. 2277 (2012) (43.65 percent).

⁶ 327 NLRB at 952 fn. 10.

⁷ *Abrams v. Communications Workers*, 59 F.3d 1373, 1379 (D.C. Cir. 1995) (quoting *Hudson*, 475 U.S. at 306) (emphasis added).

⁸ *Id.* at 1379 fn. 6 (emphasis in original).

⁹ 203 F.3d at 47–48.

¹⁰ 350 NLRB at 1169.

¹¹ *Id.*

the facts of this case compels the conclusion that the percentage must be supplied at stage 1.

The foregoing precedent also renders inappropriate our colleagues' reliance on a balancing of interests analysis to hold that the union's failure to provide preelection information relevant to the exercise of *Beck* rights is not arbitrary. Moreover, even assuming such an analysis is appropriate, it does not favor permitting a union to wait until after an employee objects before disclosing the percentage of dues reductions for *Beck* objectors. In *Chambers & Owen*, the Board found the burden on unions of furnishing the more detailed information underlying such a reduction at stage 2 rather than stage 3 would not be particularly onerous, in large measure because of advances in computer and internet technology.¹² Further advances in computer technology make this rationale even more compelling today than it was then. And, as the Board further noted in *Chambers & Owen*, regulatory disclosure requirements already require unions to report their expenditures on representational activities.¹³ Based on those figures, it should be relatively easy to calculate the remainder of total expenditures devoted to nonrepresentational purposes.¹⁴

The majority acknowledges that the burden on most unions of furnishing the percentage reduction at stage 1 would be slight because most unions already have the percentage in hand as part of their *Beck* procedures. As a case in point, the Union produced the requested percentages within four days of a request. Clearly, the information was readily available, and producing it was no burden at all. The majority expresses concern, however, for small unions that may not have *Beck* procedures or nonrepresentational calculations in place. Presumably this problem would involve only those small unions that had never dealt with a *Beck* objection and would therefore have to calculate the percentage reduction for the first time. However, it seems likely that the burden of doing so would be proportional to the size of the union: the smaller the union, the simpler the calculation, and the lighter the burden. Thus, we are not convinced that the burden on small unions to produce the percentage at stage 1 is significant. It is certainly no reason to excuse

all unions from providing employees with the information they need to exercise their statutory rights.

The Act refers to the Board's role, in part, as assuring employees the "fullest freedom" in exercising their protected rights.¹⁵ In the present context, this means ensuring that employees have sufficient information to make an informed choice about their *Beck* rights. The change sought by the General Counsel and Charging Party is not earthshaking. Nonetheless, our colleagues decline to make this modest adjustment to the *California Saw* framework because they believe directly controlling legal precedent does not compel it. We disagree. We believe that *Hudson*, *Chambers & Owen*, and *Penrod* collectively persuade that there is only one reasonable view of a union's duty of fair representation in this case.

Besides this direct persuasive authority, we believe that analogous legal rules and developments support our view as well. First, throughout Supreme Court jurisprudence on employees' mandatory dues obligations to a union serving as their bargaining representative, there is strong concern for protection of employees against compelled speech in derogation of their First Amendment rights. See, e.g., *Machinists v. Street*, 367 U.S. 740, 788-789 (1961) ("There is, of course, no constitutional reason why a union or other private group may not spend its funds for political or ideological causes if its members voluntarily join it and can voluntarily get out of it. . . . But a different situation arises when a federal law steps in and authorizes such a group to carry on activities at the expense of persons who do not choose to be members of the group as well as those who do. Such a law, even though validly passed by Congress, cannot be used in a way that abridges the specifically defined freedoms of the First Amendment. *And whether there is such abridgment depends not only on how the law is written but also on how it works.*") (citations omitted and emphasis supplied). Indeed, in the context of an agency fee imposed on nonmember employees by state law, the Supreme Court has recognized prior notice as an important contributor to protection of employees' First Amendment rights. In that context, "an agency-fee provision imposes 'a significant impingement on First Amendment rights,' and this cannot be tolerated unless it passes 'exact[ing] First Amendment scrutiny.'" *Harris v. Quinn*, 134 S. Ct. 2618, 2639 (2014) (quoting *Knox v. Service Employees*, 132 S. Ct. 2277, 2289 (2012)). The Court continued:

In *Knox*, we considered specific features of an agency-shop agreement—allowing a union to impose upon nonmembers a special assessment or dues increase *without providing notice* and without obtaining the

¹² Id. at 1169–1170.

¹³ 350 NLRB at 1169–1170 fn. 14 (noting that U.S. Department of Labor Form LM-2 requires unions to disclose the amount of disbursements for all representational activities).

¹⁴ The majority, citing again to the Board's 1999 decision in *Dyncorp*, argues that calculating nonrepresentational expenditures would be "an expensive and time-consuming undertaking." The exponential advancement in technology and computerized record keeping in the past 15 years effectively blunts any force this argument may have had in 1999.

¹⁵ Sec. 9(b).

nonmembers' affirmative agreement—and we held that these features could not even satisfy the [commercial speech protection] standard employed in *United States v. United Foods, Inc.*, 533 U.S. 405, 415 (2001), where we struck down a provision that compelled the subsidization of commercial speech.

Id. (italics for emphasis). The Court's reasoning in *Knox*, as restated by *Harris*—that in public sector cases, First Amendment freedoms require prior notice in order to secure nonmember employees' affirmative agreement to agency fees—supports our view that some greater and earlier notice to private sector employees under our Act is required. Otherwise, even under a duty of fair representation standard, judicial assessment of how our Act works, i.e., the rules of disclosure mandated by a federal agency, will inevitably be that it impermissibly abridges those freedoms.

Another instructive analogy arises from the area of attorney fee disclosures to potential class members in Rule 23 class action litigation monetary settlements. There, attorneys who serve as class counsel hold duties to class members similar to a union's duty of fair representation to employees.¹⁶ Thus, such attorneys, in their capacity representing the class, and in order to receive judicial approval for any class settlement, must disclose the amount of the claimed attorneys' fees in the proposed class action settlement—and how that amount was calculated—to class members. This disclosure must happen *before* such members make the decision whether to stay in the class or “opt out” of the class (and thus “opt out” of representation by class counsel), so that potential class members can make an informed choice to (1) accept the claimed fee amount, (2) reject it entirely by “opting out,” or (3) contest the fee claim with an objection. See generally Newberg on Class Actions § 8:22–8:225 (5th ed.); Manual for Complex Litigation, Fourth, §§ 21.722–21.724 (Federal Judicial Center, 2004). Similarly, providing notice of the exact amount of nonrepresentational expenditures that the union will charge *before* employees must decide whether to forego membership and object to that amount allows those employees to make an informed choice as to whether to object to both union membership and payment. See Newberg on Class Actions § 8.25 (“Allowing class members an opportunity thoroughly to examine counsel's fee motion, inquire into the bases for various charges and ensure that they are adequately documented and supported is essential for the protection of the rights of class members.”) (quoting *In re Mercury Interactive Corp. Securities Litigation*, 618 F.3d 988, 994 (9th Cir. 2010)).

¹⁶ Fed.R.Civ.P. 23(g) (“Class counsel must fairly and adequately represent the interests of the class”).

Finally, the trend in federal law is to require more pre-choice disclosure, not less. This is especially true where a consumer or employee is involved. Consider, for example, the expansion of mortgage loan and credit card disclosure requirements in the Truth in Lending Act of 1968, Mortgage Disclosure Improvement Act of 2008, Credit Card Disclosure Act of 2008, 15 U.S.C. §1601 et seq., and their implementation in rules promulgated by the Federal Reserve Board, 74 FR 23289 (2009), and 75 FR 7658 (2010), and by the Consumer Financial Protection Bureau, 77 FR 69738 (2012); the imposition of food labeling and nutrition disclosure requirements in the Nutrition Labeling and Education Act (NLEA) of 1990 (the 1990 amendments), which added section 403(q) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 343(q)), and the implementation and proposed expansion of these requirements by the Food and Drug Administration, 79 FR 11880 (2014). The majority offers no compelling reason why employees, who are essentially the consumers of union services, should be afforded less notice concerning fees and less “truth-in-labeling” than the average American consumer receives. Similarly, it is a mystery why employees should not be fully informed by a union so they can exercise their dues objection rights, even while they must be fully informed of their rights under federal employment laws by federal contractor employers, per the Department of Labor. See 75 FR 28368 (2010). Significantly, when the federal government participates in the market as a consumer, it demands far more detailed notice from its service providers, e.g., their past history of legal compliance troubles, than what the Board here is willing to require for employees, who are expressly protected by our Act, about where their own money may be going. See Executive Order 13673, “Fair Pay and Safe Workplaces,” 79 FR 45309 (July 31, 2014). What's sauce for the goose is sauce for the gander. Employees should not receive less notice, just because the relevant facts are in possession of a union.

Requiring that unions provide employees with the percentage of nonrepresentational expenses at stage 1, before the employees must decide their status under a union-security clause, comports with basic considerations of fairness, is essential to the exercise of their statutory rights, and is consistent with the overwhelming national approach of “more notice, not less.” Thus, we would require a union to provide represented employees with its reduced fee calculation for nonchargeable expenses at stage 1.¹⁷

¹⁷ We would apply this requirement prospectively, and accordingly we concur in the dismissal of the complaint.

Dated, Washington, D.C. September 10, 2014

Philip A. Miscimarra,	Member
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Harry I. Johnson, III,	Member
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NATIONAL LABOR RELATIONS BOARD

Michael Beck, Esq., for the General Counsel.

Jonathan D. Karmel, Esq., of Chicago, Illinois, for the Respondent Union.

James Plunkett, Esq., of Springfield, Virginia, for the Individual Charging Party.

DECISION

STATEMENT OF THE CASE

C. RICHARD MISERENDINO, Deputy Chief Administrative Law Judge. On June 5, 2005, a charge was filed against the United Food and Commercial Workers Union, Local 700 (Local 700 or Union)¹ alleging that Local 700 failed to inform the Individual Charging Party, Laura Sands (Sands), of her right to become a nonmember and of her right as a nonmember to object to paying the equivalent of union dues and fees. This portion of the charge alleging that Sands was not provided with information in compliance with the legal standards established in *Communications Workers v. Beck*, 47 U.S. 735 (1988), and *NLRB v. General Motors*, 373 U.S. 734 (1963), was dismissed by the Regional Director for Region 25. On October 15, 2005, however, a complaint issued alleging that Local 700 violated Section 8(b)(1)(A) of the Act by failing to provide Sands with the percentage reduction of dues and fees for nonmember objectors when the Union first informed her of her obligations under the union security clause.

On July 10, 2007, the General Counsel, Respondent Union, and Individual Charging Party submitted a joint motion and stipulation of facts pursuant to Section 102.35(a)(9) of the Board's Rules and Regulations waiving a hearing and submitting this case to an administrative law judge for issuance of findings of fact, conclusions of law and order. The parties agreed that the stipulation of facts, charge, complaint, answer, exhibits attached to the stipulation, statement of issues presented, and each party's statement of position would constitute the entire record in this case and that no oral testimony was necessary or desired.

On August 22, 2007, I issued an Order granting the joint motion and directing the parties to file briefs by September 24, 2007. The Individual Charging Party and the Respondent Union filed briefs.

On the entire record, and after considering the parties' position statements and the briefs filed by the Individual Charging Party and the Respondent Union, I make the following

¹ All dates are 2005, unless otherwise indicated.

FINDINGS OF FACT

I. JURISDICTION

Kroger Limited Partnership I (Kroger or Employer), a corporation, with its principal office in Cincinnati, Ohio, and a facility located, among other places, in Crawfordsville, Indiana, is engaged in the retail sale of groceries, pharmaceuticals, and sundry goods. During the 12-month period preceding the filing of the complaint, Kroger, purchased and received at its Crawfordsville, Indiana facility, goods valued in excess of \$50,000 directly from points outside the State of Indiana. At all material times, Kroger has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent, United Food and Commercial Workers Union, Local 700, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Stipulated Facts

Local 700 and Kroger have a collective-bargaining agreement which requires as a condition of employment all bargaining unit employees to join or pay fees to the Union. On December 10, 2004, Sands was hired by Kroger to work at the Crawfordsville, Indiana facility.

By letter, dated January 11, 2005, the Union advised Sands that as a new employee she was represented by the Union. It also asked her to complete and return a membership application packet, which contained a copy of the collective-bargaining agreement's valid union-security clause, a membership application with check-off authorization, and the following separate statement:

Important Information Concerning Your
Opportunity to Become an Active Member of the
United Food and Commercial Workers International
Union, AFL-CIO, CLC, Local 700 and Your
Rights Under the Law.

The right by law, to belong to the Union and to participate in its affairs is a very important right. Currently, you also have the right to refrain from becoming a member of the Union. If you choose this option, you may elect to satisfy requirements of a contractual union security provision by paying the equivalent of an initiation fee and monthly dues to the Union. In addition, non-members who object to payment in full of the equivalent of dues and fees may file written objections to funding expenditures that are not germane to the Union's duties as your agent for collective bargaining. If you choose to be an objector, your financial obligation will be reduced very slightly. Individuals who choose to file such objections should advise the Union in writing at its business address of this choice. The Union will then advise you of the amounts which you must pay and how these amounts are calculated, as well as any procedures we have for challenging our computations.

Please be advised that non-member status constitutes a full waiver of the rights and benefits of UFCW membership. More specifically, this means that you would not be allowed to vote on contract modifications or new con-

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tracts; would be ineligible to hold union office or participate in union elections and all other rights, privileges, and benefits established for and provided to active UFCW members by the UFCW International Constitution, Local 700 Bylaws, or established by the local Union.

We are confident that after considering your options, you will conclude that the right to participate in the decision making process of your Union is of vital importance to you, your family and your co-workers, and you will complete your application for membership in the United Food and Commercial Workers.

Your involvement in your union is vital to the protection of job security, wages, benefits, and working conditions.

(Jt. Exh. 2.)

On January 25, 2005, the Union sent Sands a second letter which explained her financial obligations to the Union. With regard to the amount of dues and the initiation fees, the letter stated:

Currently, full regular monthly dues and fees based on your hire date of **December 10, 2004** are set forth below.

Dues for February 2005	
at \$25.39 per month	\$25.39
Initiation fees	\$66.00
Total	\$91.39

(Jt. Exh. 3.)

Enclosed with the letter was a duplicate membership application packet, including the above-reference notice informing Sands, among other things, of her right to be and remain a non-member of the Union and to object to paying any dues or fees not germane to the Union's duties as the exclusive collective-bargaining representative. A few days later, Sands joined the Union.

On June 25, Sands sent a letter to the Union resigning as a member "effective immediately" and stating:

... I object to the collection and expenditure by the union of a fee for any purpose other than my pro rata share of the union's costs of collective bargaining, contract administration, and grievance adjustment, as is my right under *Communications Workers v. Beck*, 487 U.S. 735 (1988). Pursuant to *Teachers Local 1 v. Hudson*, 475 U.S. 292 (1986), and *Abrams v. Communications Workers*, 59 F.3d 1373 (D.C. Cir. 1995), I request that you provide me with my procedural rights, including: reduction of my fees to an amount that includes only lawfully chargeable costs, notice of the calculation of that amount, verified by an independent certified public accountant; and notice of the procedure that you have adopted to hold my fees in an interest-bearing escrow account and give me an opportunity to challenge your calculation and have it reviewed by an impartial decisionmaker. Accordingly, I also hereby notify you that I wish to authorize only the deduction of representation fees from my wages.

(Jt. Exh. 4.)

Four days later, on June 29, the Union responded in writing advising Sands of the percentage of her dues reduction and the reduced dollar amount. She also was provided with a copy of portions of the auditors' report and the procedure for objecting to and challenging the Union's calculation of the nonmember fees.² Sands did not challenge the Union's calculations.

III. ISSUE SUBMITTED

Did the Respondent violate its duty of fair representation under the National Labor Relations Act by failing to include in its initial *Beck* notice to the Charging Party the amount of full Union dues and the percentage reduction in dues that objecting members would receive?

IV. THE PARTIES' POSITIONS

All of the parties acknowledge, and agree, that under current Board law new employees must receive an initial notice informing them of their right not to become a union member, of their right not to pay full union dues and fees, and of their right to object to payment of full dues and fees. See *California Saw & Knife Works*, 320 NLRB 224, 229-230 (1995). If an employee objects to funding union activities that are unrelated to collective-bargaining, contract administration, and grievance adjustment, the Union must advise the *Beck* objector of the percentage of reduction in fees, the basis for the union's calculation, and of the right to challenge these figures.

The Individual Charging Party and the General Counsel do not assert that under current Board law a violation occurred. Rather, they argue that current Board law should be reconsidered and reversed to require that unions inform employees in the initial *Beck* notice of the percentage reduction in dues that an objecting employee would receive and the total amount of dues to which the percentage applies. They argue that current Board law conflicts with the Supreme Court's decision in *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 306 (1986), a public sector case, where nonunion employees challenged an agency shop agreement on the grounds that it violated their First and Fourteenth Amendment rights because it did not adequately prevent the use of their proportionate share of dues for impermissible purposes. The Court stated that "[b]asic considerations of fairness . . . dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee."³

The General Counsel and Individual Charging Party therefore assert that *Hudson* directs and fairness dictates that notice of the percentage deduction, along with the full dues, should be given to potential objectors, like Sands, in the initial notice in order for them to decide intelligently whether or not to object.

² The Union maintains 36 separate dues rates, covering 5 Kroger bargaining units, including 9 separate dues rates covering the Kroger clerks and meat bargaining units.

³ It should be pointed out that the "potential objectors" in *Hudson*, where not potentially objecting to being union members (because they already were nonunion members). Rather, as nonunion members they were potential objectors to the use of agency shop fees for purposes other than collective-bargaining and contract administration, which makes them more akin to second stage *Beck* objectors, who may potentially challenge a union's financial calculations.

They also argue that a change in current Board law is warranted in light of the appellate court decision in *Penrod v. NLRB*, 203 F.3d 41, 47 (D.C. Cir 2000), and the Board's decision in *Teamsters Local 579 (Chambers & Owen, Inc.)*, 350 NLRB 1166 (2007).

Finally, the General Counsel argues that requiring the Union to provide this information in the initial notice will not be burdensome because many major national and international unions have developed *Beck* systems with the percentage information readily available. In addition, the General Counsel asserts that local unions can make use of a "local presumption" that the percentage of a local's expenditures chargeable to objectors is at least as great as the chargeable percentage of its parent union and can rely on their international's *Beck* system to comply with their duty of fair representation.

Local 700 argues that a union breaches its duty of fair representation only if its actions are arbitrary, discriminatory, or in bad faith. Unions are given a "wide range of reasonableness" in meeting this standard. The current Board law is clear with regard to the initial notice unions must give to new employees. There is no argument or evidence that Local 700 violated its duty under current Board law. Rather, the stipulated facts show that the Union initially provided Sands with all the information required by law. Thus, the Union asserts that its conduct was not arbitrary, discriminatory or in bad faith.

Local 700 further asserts that providing Sands and thousands of other employees with individual calculation of their reduced dues and fees would be burdensome notwithstanding the fact that national and international unions have *Beck* systems in place. It points out that in Kroger bargaining units alone, the Union maintains 36 separate dues rates covering thousands of employees in five different Kroger bargaining units. Local 700 therefore argues that providing specific calculations of reduced dues and fees for all nonmembers would be overly burdensome.

Finally, Local 700 argues that reliance on *Hudson*, supra, is misplaced. It asserts that *Hudson* involved public sector employees and First Amendment rights and concerned nonunion employees who had already qualified for a reduced fee.

V. ANALYSIS AND FINDINGS

It is well settled law that a Board administrative law judge must "apply established Board precedent which the Supreme Court has not reversed" (citation omitted), leaving for the Board, not the judge, to determine whether that precedent should be varied. *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984). All parties here agree that under current Board law Local 700 has not acted arbitrary, discriminatory, or in bad faith in violation of Section 8(b)(1)(A) of the Act. In addition, a careful reading of the Board's recent decision in *Chambers & Owens, Inc.* does not establish a basis for finding a violation.

In *Chambers & Owens, Inc.*, the issue before the Board was whether the union was required to provide a nonmember *Beck* objector with information concerning its affiliates' activities and the extent to which those activities were chargeable or nonchargeable prior to the nonmember objector's filing a challenge to the Union's reduced dues and fees calculation. 350 NLRB 1166, 1168 (2007). In other words, the question presented to the Board was how much information is a union re-

quired to furnish a *Beck* objector at the second stage of the *Beck* objections procedure in order for the objector to decide whether or not to challenge the unions' reduced fee computations.

In that context, the Board agreed with the Supreme Court's reasoning in *Hudson* that "basic considerations of fairness" dictate that adequate information regarding dues and fees reductions be provided to objectors to allow them to challenge unions' reduced fees computations. It also found, in accord with the District of Columbia Circuit in *Penrod*,⁴ that as to affiliate expenditures, *Hudson* is dispositive of the issue, i.e., unless a union demonstrates that none of the amount paid to affiliates was used to subsidize activities for which nonmembers may not be charged, then an explanation of the share that was so used is surely required. *Penrod*, 203 F.2d at 47. Notwithstanding the Board's favorable discussion of *Hudson* and *Penrod*, the Board in *Chambers & Owens, Inc.*, did not address the issue of whether a union is required to provide a potential *Beck* objector with financial information in the initial *Beck* notice. Despite the appellate court's holding in *Penrod* on that very issue, the Board to date has not applied the *Penrod* holding on that issue, thereby indicating a reversal of current Board law. An administrative law judge is bound to apply established Board precedent which neither the Board nor Supreme Court has reversed, notwithstanding contrary decisions by courts of appeals. *Los Angeles New Hospital*, 244 NLRB 960, 962 fn. 4 (1979), enf'd. 640 F.2d 1017 (9th Cir. 1981). As a matter of current Board law, therefore, Local 700's conduct did not violate the Act.

Nor do the factual circumstances here warrant a violation. The thrust of the General Counsel and Individual Charging Party's argument is that more financial information in the initial notice is essential to helping a potential objector make an informed decision on whether or not to object to union membership. The undisputed facts show, however, that on June 25, 2005, Sands resigned as a union member "effective immediately" without any financial information other than the amount of union member dues. She also objected to the collection and expenditure by the Union of a fee for any purpose other than collective-bargaining, contract administration, and grievance adjustment, and demanded the percentage of her dues reduction and the reduced dollar amount, which she promptly received and did not challenge. Thus, it is quite apparent that Sands had all the information she needed to make an informed decision to object. In *Chambers & Owens, Inc.*, the Board found that where a union's procedure purporting to implement *Beck* actually impedes a nonmember employee from exercising his *Beck* rights and interferes with the statutory right under Section 7 to refrain from assisting a union, its conduct is arbitrary and un-

⁴ In *Penrod*, the DC Circuit decided three issues: Did the NLRB engage in reasoned decisionmaking in determining that a list of general expenditure categories provided by the union, in response to a *Beck* objection, was sufficient to allow employees to determine whether to challenge reduced fee calculations; was the union required to explain how its affiliated unions used money that the union considered chargeable to *Beck* objectors; and was the union required to identify in the initial *Beck* notice given to new employees and financial core payors, i.e., those employees who are not full union members, the percentage reduction in dues that would result from a *Beck* objection?

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reasonable and therefore violated of Section 8(b)(1)(A) of the Act. 350 NLRB 1166, 1168. The undisputed facts here do not support such a conclusion.

For these reasons, I find that the Respondent did not violate Section 8(b)(1)(A) of the Act as alleged in the complaint. Accordingly, I shall recommend that complaint be dismissed.

CONCLUSIONS OF LAW

The Respondent has not violated the Act in any manner alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

ORDER

The complaint is dismissed.

Dated, Washington, D.C. March 7, 2008

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

I further certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system as they are registered users.

Date: February 11, 2015

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